

No. 14471

United States
Court of Appeals
for the Ninth Circuit

THE QUAKER OATS COMPANY, a corporation,
Appellant,
vs.

W. E. McKIBBEN, A. B. CARTER, O. R. LEWIS
and CHARLEY GEERS, Appellees.

THE QUAKER OATS COMPANY, a corporation,
Appellant,
vs.

CHARLEY GEERS, Appellee.

Transcript of Record

Appeals from the United States District Court for the Southern
District of California, Central Division

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Downey, California,
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Downey, California.

For Appellee Charley Geers:

CHARLEY GEERS, in Pro Per.
1248 Bothwell Street,
Colton, California. [1*]



In the United States District Court for the Southern District of California, Central Division

No. 14690-C.

THE QUAKER OATS COMPANY, a corporation,
Plaintiff,

vs.

JOHN J. COUCH, CHARLEY GEERS, D. R. LEWIS, J. F. SCHRIMSHER, individually and doing business as Thrifty Poultry Company; ABRAM B. BUCHNER and FRANCES JANE BUCHNER, individually and doing business as Downey Poultry & Rabbit Supply Company,
Defendants.

COMPLAINT FOR CONVERSION OF MORTGAGED PROPERTY

Plaintiff complains and alleges:

1. Plaintiff, The Quaker Oats Company, a corporation, is now and at all times herein mentioned has been a corporation duly organized under and existing by virtue of the laws of the State of New Jersey and doing business within the State of California and having an office and place of business within Los Angeles County, within said district and division. [2]

2. The defendant D. R. Lewis is now and at all times mentioned herein has been a citizen of the State of California, resident within said district and division. The defendant J. F. Schrimsher is now and at all times mentioned herein has been a citi-

zen of the State of California, resident within said district and division, and does business under the fictitious firm name and style of Thrifty Poultry Company therein. The defendants Abram B. Buchner and Frances Jane Buchner are now and at all times herein mentioned have been citizens of the State of California, resident within said district and division, and do business under the fictitious firm name and style of Downey Poultry & Rabbit Supply Company.

3. The defendants John J. Couch and Charley Geers are now and at all times herein mentioned have been citizens of the State of California, resident within said district, and are and have been co-partners doing business therein under the fictitious firm name and style of Park Avenue Poultry Company, at Riverside, County of Riverside, State of California.

4. The amount involved herein, exclusive of interest and costs, exceeds the sum of \$3,000.00.

5. Heretofore and during or about the month of August, 1952, the plaintiff was the owner and holder of certain chattel mortgages pertaining to approximately 1,500 live and animate turkeys therein described and listed and which, when mortgaged, had been located upon the real properties of the therein named mortgagors. That said chattel mortgages were given and made for valuable considerations and each was acknowledged, and both were duly recorded in the office of the County Recorder of Riverside County, California. One of said mortgages was executed and given to plaintiff by one

Carl W. Ohlson and Marian T. Ohlson and was recorded in Book 1356, page 574, Records [3] of Riverside County, California. The second of said mortgages was executed and given to plaintiff by one Harry T. McVickers and Ruth E. McVickers and was recorded in Book 1356, page 541, Records of Riverside County, California. Both were there recorded upon the 4th day of April, 1952, in accordance with the recording acts of the State of California. Photostatic copies of said chattel mortgages are attached hereto, marked Exhibits A and B respectively, and by reference made a part hereof as though here set forth in full.

6. Said mortgages had not been discharged and were in full force and effect during the month of August, 1952.

7. That during or about said month of August, 1952, the defendants wrongfully removed from Riverside County, California, to Los Angeles County, California, and wrongfully converted to their own use said 1500 live turkeys, which weighed approximately 20 pounds each and which were the subject of said mortgages, and upon which plaintiff had a lien. The reasonable value of said turkeys was \$9,600.00.

8. Plaintiff has been damaged in said sum and has expended in addition thereto approximately \$800.00 in the pursuit and tracing of said turkeys.

Wherefore, plaintiff prays judgment against said defendants, jointly and severally, for the sum of

\$10,400.00 together with interest thereon, and for the costs of suit herein expended.

/s/ GEORGE R. MAURY,
Attorney for Plaintiff

[4]

EXHIBIT "A"

Chattel Mortgage

Carl W. and Marian T. Ohlson, Mortgagor, hereinafter called Grower, of Perris, County of Riverside, California, for the consideration hereinafter named, hereby mortgages to Swift & Co., Fontana, and The Quaker Oats Company, a corporation with a place of business in Los Angeles, California, Mortgagees, the following personal property:

Type of Poultry: Turkeys.

Number of Head: 1601.

Breed: Broad Breasted Bronze.

Approximate Age: Day old.

being all poultry of this type owned by Grower together with all increase thereof, all replacements thereof and all additions thereto, and all unused feed and grain, said poultry, and all unused feed and grain, being located on premises in the County of Riverside, California, described as E. 5 acres of Lot 35 Tract 2 of Nuevo Land Company, Maps Book 9 Page 56, Riverside County, which premises are sometimes known as.....

This mortgage is given in consideration of monies advanced by said Swift & Company as part payment for poults purchased by Grower which indebtedness is evidenced by promissory note, dated

the....day of...., 19... payable on or before the 31st day of December, 1952, in the principal amount of \$3,600.00.

This mortgage is further given in consideration of the extension of credit by The Quaker Oats Company for the purchase of feed, grain and grit from this date to December 31, 1952, in an amount not to exceed \$22,500.00.

Provided that if Grower shall pay to Swift & Co. the amount of said note with interest, when due, and shall pay to The Quaker Oats Company on or before December 31, 1952, all amounts of money not in excess of \$26,100.00 becoming due because of credit extended by The Quaker Oats Company from this date to December 31, 1952, then this mortgage shall be void, otherwise to remain in full force and effect.

Provided, further, that if Grower shall default in paying the amounts of money aforesaid when due; or if the Mortgagees or either of them shall feel insecure; or if Grower shall remove any part of the mortgaged property from the above described premises; or if Grower shall sell or assign or attempt to sell or assign any part of the mortgaged property without the prior written consent of Mortgagees; or if Grower shall breach any provisions of that Grower agreement dated March 18, 1952; Mortgagees or either of them may, without notice to Grower, declare all said amounts of money immediately due and payable and may, without notice to Grower, take possession of the mortgaged property and sell and dispose of said mortgaged property in

the manner prescribed by law and from the proceeds of such sale may pay all prior liens and retain all costs and charges, including attorney's fees, in connection with the taking of possession, care and sale of the mortgaged property, together with said amounts of money due and payable, rendering the surplus, if any, to the Grower. In the event a deficiency exists Grower will immediately pay Mortgagees the amount of the deficiency.

The word "Grower" shall be construed in the singular or plural sense as the context requires. This Chattel Mortgage shall be jointly and severally binding upon all persons signing as Grower.

Witness the hand and seal of Grower this 18 day of March, 1952.

/s/ CARL W. OHLSON [Seal]
Grower

/s/ MARIAN T. OHLSON [Seal]
Grower

Witness: Signed William B. Brooks.

State of California,

County of Riverside—ss.

On this 18 day of March, 1952, before me, Stella M. Broesawle, a notary public in and for the said county and state, residing therein, duly commissioned and sworn, personally appeared Carl W. Ohlson-Marian T. Ohlson, known to me to be the person(s) whose name(s) is (are) subscribed to the

This mortgage is given in consideration of monies advanced by said Swift & Company as part payment for poultis purchased by Grower which indebtedness is evidenced by promissory note, dated the ...day of...., 19... payable on or before the 31st day of December, 1952, in the principal amount of \$3,000.00.

This mortgage is further given in consideration of the extension of credit by The Quaker Oats Company for the purchase of feed, grain and grit from this date to December 31, 1952, in an amount not to exceed \$20,000.00.

Provided that if Grower shall pay to Swift & Co. the amount of said note with interest, when due, and shall pay to The Quaker Oats Company on or before December 31, 1952, all amounts of money not in excess of \$23,000.00 becoming due because of credit extended by The Quaker Oats Company from this date to December 31, 1952, then this mortgage shall be void, otherwise to remain in full force and effect.

Provided, further, that if Grower shall default in paying the amounts of money aforesaid when due; or if the Mortgagees or either of them shall feel insecure; or if Grower shall remove any part of the mortgaged property from the above described premises; or if Grower shall sell or assign or attempt to sell or assign any part of the mortgaged property without the prior written consent of Mortgagees; or if Grower shall breach any provisions of that Grower agreement dated....., 19...; Mortgagees or either of them may, without notice to Grower,

declare all said amounts of money immediately due and payable and may, without notice to Grower, take possession of the mortgaged property and sell and dispose of said mortgaged property in the manner prescribed by law and from the proceeds of such sale may pay all prior liens and retain all costs and charges, including attorney's fees, in connection with the taking of possession, care and sale of the mortgaged property, together with said amounts of money due and payable, rendering the surplus, if any, to the Grower. In the event a deficiency exists Grower will immediately pay Mortgagees the amount of the deficiency.

The word "Grower" shall be construed in the singular or plural sense as the context requires. This Chattel Mortgage shall be jointly and severally binding upon all persons signing as Grower.

Witness the hand and seal of Grower this 19 day of March, 1952.

/s/ HARRY McVICKERS [Seal]
Grower

/s/ RUTH E. McVICKERS [Seal]
Grower

Witness: Signed William B. Brooks.

State of California,
County of Riverside—ss.

On this 19th day of March, 1952, before me, E. Vivian Leech, a notary public in and for the said county and state, residing therein, duly commissioned and sworn, personally appeared Harry Mc-

Vickers, Ruth E. McVickers, known to me to be the person(s) whose name(s) is (are) subscribed to the within chattel mortgage and acknowledged that he (they) executed the same.

[Seal] /s/ E. VIVIAN LEECH,
Notary Public [7]

Received and Recorded April 4, 1952. Book 1356,
page 541. Jack A. Ross, Recorder. [8]

[Endorsed]: Filed November 3, 1952.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS, W. E. McKIBBEN, A. B. CARTER, and O. R. LEWIS

Come Now W. E. McKibben and A. B. Carter, co-partners doing business as Downey Rabbit and Poultry Company, who were erroneously sued herein as Abram B. Buchner and Frances Jane Buchner, and O. R. Lewis, an individual doing business as Thrifty Poultry Company, who was erroneously sued herein as D. R. Lewis, severing themselves from their co-defendants, answer the complaint on file herein by admitting, denying, and alleging as follows:

I.

Answering Paragraphs 2, 3, 5, and 6 thereof, these defendants allege that they have no information or belief as to the allegations contained therein, and basing their denial on said lack of information and belief, deny each and every allegation con-

tained therein, both generally and specifically, the same as though said denials were set forth herein in detail. [9]

II.

Answering Paragraphs 7 and 8 of said complaint, these defendants deny that they removed from Riverside County any of the turkeys set forth in said paragraph; deny that they have converted to their own use any turkeys which were the property of plaintiff or which were the subject of the mortgages set forth in said complaint. These defendants deny that they purchased any turkeys from Carl W. Ohlson or Marian T. Ohlson, the mortgagors set forth in Exhibit A of said complaint, or from Harry McVickers or Ruth McVickers, the mortgagors set forth in Exhibit B of said complaint; deny that plaintiff has been damaged in the sum of \$9,600.00 or in the sum of \$800.00 or in any other sum.

For Separate and Distinct Defense These Defendants Allege:

I.

That they are informed and believe that it is the common practice in the turkey-growing trade that mortgagors may sell said mortgaged turkeys, providing any check given in payment thereof is made payable jointly to mortgagors and mortgagees. These defendants are further informed and believe that defendants John J. Couch and Charley Geers purchased certain turkeys from the mortgagors set forth in Exhibits A and B attached to said com-

plaint, and that the check in payment thereof was made payable jointly to mortgagors and plaintiff. These defendants are further informed and believe that plaintiff and aforesaid mortgagors accepted said check in full payment of all claims for turkeys delivered to defendants John J. Couch and Charley Geers.

II.

Your answering defendants admit that they have bought certain turkeys from defendants John J. Couch and Charley Geers, but allege that they have no knowledge of the source of said turkeys nor whether said turkeys were formerly the property of plaintiff and [10] mortgagors set forth in said complaint and exhibits, and allege that said purchase was in Los Angeles County, California, and was for value.

III.

That by so accepting said checks and payment and by so following the common practice in said trade, plaintiff has designated the aforesaid mortgagors as their agents for the purpose of mortgaging sales of said turkeys. That, if defendant purchased any of the turkeys set forth in said complaint, they were relying upon the common practice in the trade and acted in good faith without prior knowledge of claims of plaintiff. That any claims plaintiff might have had therein are not valid against these defendants by reason of their holding out said mortgagees as their agents for purposes of sale.

IV.

That these defendants have been forced to defend this lawsuit at an expense to them of approximately \$500.00, all of which is to their damage.

Wherefore these defendants pray that plaintiff take nothing by its complaint and that defendants be awarded their costs of defending said suit, together with court costs therein.

/s/ FRANK C. NIMOCKS,
Attorney for Defendants, W. E. McKibben, A. B.
Carter, and O. R. Lewis. [11]

Duly Verified.

Affidavit of Service by Mail attached. [12]

[Endorsed]: Filed November 21, 1952.

[Title of District Court and Cause.]

ANSWER

Comes now John J. Couch, sued herein individually and doing business as Thrifty Poultry Company with Charley Geers, D. R. Lewis and J. F. Schrimsher, and answering for himself alone Plaintiff's complaint on file herein, admits, denies and alleges:

I.

Admits Paragraphs I, II and IV of said complaint.

II.

Answering Paragraph III thereof, this Defend-

ant admits that he is now and at all times therein mentioned has been a citizen of the State of California, resident within said district and denies that he and Defendant Charley Geers are or ever have been [13] co-partners doing business therein or any other place under the fictitious firm name and style of Park Avenue Poultry Company, or any other style or fictitious name whatsoever, or in any other manner whatsoever, at Riverside, County of Riverside, State of California, or at any place at all.

This Defendant alleges that he as an individual and alone is doing business under the fictitious name and style of "Park Avenue Poultry Co." at 4398 Park Avenue, Riverside, California.

III.

Admits Paragraphs V and VI of said complaint.

IV.

Answering Paragraph VII of said complaint, this Defendant denies generally and specifically each and every allegation, matter and/or thing therein contained and denies that he has wrongfully removed from Riverside County, California, or any other place or at all, and/or wrongfully converted to his use said 1500 live turkeys, or any turkeys at all, any turkeys upon which Plaintiff had a lien; also, denies that the value of said turkeys alleged to be wrongfully removed and wrongfully converted was of the value of \$9,600.00 or any other sum or any sum whatsoever.

V.

Answering Paragraph VIII of said complaint this Defendant denies that Plaintiff was damaged as therein alleged in the sum of \$800.00 or any other sum or any sum whatsoever.

As a Further, Separate and Distinct Defense, This Defendant Alleges:

I.

That one Mr. Brooks is the general field manager of Plaintiff herein. That prior to the alleged act of removing said turkeys, as set out in said complaint, the said Plaintiff and Plaintiff's general field manager, authorized, agreed to and sanctioned and [14] gave permission to the said Carl W. Ohlson, Marian T. Ohlson, Harry T. McVickers and Ruth E. McVickers, to deal with Defendants herein, except this answering Defendant, with sale and moving of said alleged mortgaged turkeys, and authorized, agreed to, sanctioned, and gave permission to Defendant Charley Geers, to move, deal for said turkeys with the above-mentioned producers, Harry T. McVickers and Ruth E. McVickers. That this Defendant was informed of the foregoing and believed same to be true and relying on said information and belief, did, during the month of August, 1952, use his truck and did transport one load of live turkeys from the McVickers' property in Riverside County, California, to the "Thrifty Poultry Company", for and on behalf of Defendant, Charley Geers. That said load of turkeys weighed approximately 4000 pounds. That this Defendant did not deal with

Harry T. McVickers or Ruth E. McVickers, but only moved said turkeys for Defendant Charley Geers; that this Defendant delivered said turkeys to the "Thrifty Poultry Company" and did not convert said turkeys, or the value thereof, to his use and does not have said turkeys in his possession or under his control.

Wherefore, this Defendant prays that Plaintiff take nothing by reason of its complaint on file herein and that he be dismissed hence with his costs.

/s/ L. DONALD ST. CLAIR,

Attorney for Defendant,

John J. Couch

[15]

Duly Verified.

[16]

Affidavit of Mailing attached.

[Endorsed]: Filed December 22, 1952.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant Charley Geers, and separating himself from the other defendants, admits, denies and alleges as follows:

I.

Admits the allegations contained in paragraphs 4 and 5.

II.

Alleges that he has no information or belief suf-

ficient to enable him to answer the allegations of paragraphs 1, 2, and 6, and placing his denial on that ground, denies generally and specifically every allegation of fact in said paragraphs contained.

III.

Denies generally and specifically each and every allegation contained in paragraph 3, except that he admits that he is a citizen of the State of California, and resides within the district court in and for the southern district of California, central division. [17]

IV.

Answering paragraph 7 this answering defendant denies generally and specifically each and every allegation contained therein.

V.

Answering paragraph 8 this answering defendant denies that plaintiff has been damaged in the sum of \$800.00, or in any sum, or at all.

First Affirmative Defense

This answering defendant alleges that on or about August, 1952, one William Brooks, agent, servant, employee, and a field representative for plaintiff, approached this defendant in Perris, California, and authorized and encouraged the defendant to purchase turkeys from Carl W. and Marian T. Ohlson, and from Harry T. McVickers and Ruth E. McVickers. That in accordance with the authority and the request of said William Brooks, this

defendant, at said time and place, purchased turkeys from Carl W. and Marian T. Ohlson, and said purchase was made with the consent of said William Brooks.

Wherefore, defendant prays that the plaintiff take nothing by his Complaint; that defendant recover his costs incurred herein, and for such other and further relief as to the Court may seem proper.

Dated: January 22, 1953.

/s/ CHARLEY GEERS [18]

Affidavit of Mailing attached. [19]

[Endorsed]: Filed January 24, 1953.

[Title of District Court and Cause.]

PRETRIAL STIPULATION

After conference as required by the Pretrial Order herein, at which there appeared George R. Maury, attorney for the plaintiff, and Frank G. Nimocks, attorney for the defendants W. E. McKibben, A. B. Carter and O. R. Lewis, and at which Charley Geers and John J. Couch, other defendants, failed to appear or be represented, it was agreed and stipulated by and between the plaintiff, The Quaker Oats Company, and the defendants W. E. McKibben, A. B. Carter and O. R. Lewis that the first five paragraphs of the Complaint of the plaintiff are true.

It was further stipulated that paragraph num-

bered II of the Answer of the stipulating defendants, i.e., of defendants W. E. McKibben, A. B. Carter and O. R. Lewis, might be amended by the insertion therein on page 2, line 2, of the words "and 8" after the figure "7".

Dated: October 12, 1953.

/s/ GEORGE R. MAURY,
Attorney for Plaintiff

/s/ FRANK C. NIMOCKS,
Attorneys for Named Defendants

[Endorsed]: Filed October 17, 1953. [20]

[Title of District Court and Cause.]

MEMORANDUM OF OPINION

In the above action plaintiff filed a complaint, alleging defendants wrongfully converted to their own use 1500 live turkeys each of which was the subject of a chattel mortgage and upon which the plaintiff had a lien.

Harry McVickers and Carl W. Ohlson are turkey growers near Hemet, Riverside County, California. Plaintiff is in the business of providing poults for turkey growers and furnishing feed for the turkeys until maturity. As a protection for the money advanced for poults and feed to be furnished chattel mortgages are executed covering the turkeys. In this particular case poults were furnished to McVickers and Ohlson and, subsequently, feed was

furnished by plaintiff. [21] A chattel mortgage was obtained from each of the turkey growers, which was duly acknowledged and recorded in Riverside County, California. At the time of the execution of the chattel mortgage an additional contract was entered into between the parties by which McVickers and Ohlson agreed not to sell any of the turkeys without first having obtained the plaintiff's written consent. It does not appear that this contract was ever recorded. In due course of time the poults grew to maturity and were ready for sale.

Defendants John J. Couch and Charley Geers were hucksters. They were in the business of buying turkeys from growers, transporting the turkeys to the market in Los Angeles, California, and selling them to processors. The processors, in turn, would slaughter the turkeys and sell either to wholesalers or retailers for ultimate consumption by the general public.

Defendant Couch appeared at the ranches of Harry McVickers and Carl W. Ohlson and purchased the turkeys involved in this proceeding. Most of the purchases were made by the defendant Couch. The turkeys were paid for by checks, made payable to the growers and to the Quaker Oats Company. The turkeys were transported from Riverside County to Los Angeles where they were sold to the defendant processors. All of the checks given in payment for the turkeys involved herein were turned down by the bank, for the reason that there were not sufficient funds in the account to pay the checks when presented. However, checks given for

the first purchase of turkeys from grower McVickers were subsequently deposited and actually cleared. None of the other checks were ever paid.

Evidence in the case disclosed that the business [22] of collecting from the processors and the deposit of the money in the bank was delegated to Geers; defendant Couch's main duty being to contact the farmers, buy the turkeys and transport them to Los Angeles where they were turned over to Geers for sale. Evidence introduced at the trial indicated that at the time the defendant Couch gave checks for the purchase of these turkeys there was sufficient money in bank to cover the checks; but by the time the checks were presented to the bank for payment the account had been depleted to such extent that the checks were turned down by the bank.

Plaintiff contends that it had a valid chattel mortgage on the turkeys herein; that the chattel mortgage was good at the time of sale, and inasmuch as it was never paid for the turkeys plaintiff could maintain this action against the defendant Couch and the processors upon the theory that the turkeys had been unlawfully converted. Prior to the commencement of this action *Geers* was killed in an automobile accident and in consequence was not named as a party defendant.

All parties concede the chattel mortgages were valid. Defendants contend, however, that plaintiff lost its lien upon the turkeys at the time of sale, because the turkeys were sold with the consent of the plaintiff mortgage holder.

Evidence in the case discloses it was the custom of plaintiff to allow its growers to sell their turkeys, the only requirement insisted upon by plaintiff being that if checks were given in the sales, they would be made payable to the grower and to The Quaker Oats Company jointly. Otherwise, the company did not seem to have any control over sale of the turkeys.

However, plaintiff contends the contracts executed [23] between it and the growers provide the turkeys could not be sold without written consent to the sale having first been obtained from the mortgage holder. There is no dispute that such a contract was entered into; but the evidence conclusively shows the provision of the contract relative to obtaining written consent from the mortgage holder before turkeys were sold was waived by the conduct of The Quaker Oats Company. Although plaintiff is engaged in selling feed to numerous turkey growers, in no instance was there any evidence that plaintiff ever complained because of any grower's sale of turkeys without first having obtained the written consent of plaintiff.

Grower Ohlson testified that some time prior to sale of the first lot of turkeys to Couch he had sold a small lot of turkeys (75 or 80 birds) to a small operator; that he did not have written consent from The Quaker Oats Company to sell the birds; that the check in payment was made to himself and The Quaker Oats Company; that he sent the check to The Quaker Oats Company, which was accepted, and that the plaintiff herein at no time protested

that the birds could not be sold without its written consent. He testified he had been dealing with plaintiff for two years and had always sold the turkeys he raised without any written authorization of sale from plaintiff. He sold his turkeys to purchasers who solicited the sales, and the checks made payable to him and The Quaker Oats Company were sent to The Quaker Oats Company. At no time did The Quaker Oats Company complain that turkey sales were made without obtaining its written consent, nor did the plaintiff at any time protest such procedure.

In the case at bar the first lot of turkeys was purchased from grower McVickers. Checks were obtained by [24] McVickers from the defendant Couch, in payment of the first lot of turkeys, which checks were made payable to McVickers and The Quaker Oats Company. The checks were thereupon sent by McVickers to The Quaker Oats Company, and The Quaker Oats Company did not protest in any way, nor did it even suggest to McVickers that he did not have a right to sell the turkeys without first obtaining its written consent. Instead, the checks were accepted by The Quaker Oats Company and deposited in the regular course of business. They were returned by the bank and subsequently were redeposited by The Quaker Oats Company and were finally honored and paid.

Mr. McVickers testified he had been raising turkeys for seven years and had been dealing with The Quaker Oats Company since prior to 1952; that he had always sold the turkeys he raised and had never

had any written authorization from The Quaker Oats Company covering such turkey sales. Although some time elapsed between receipt by The Quaker Oats Company of the first checks from McVickers and subsequent sales by McVickers and Ohlson, the plaintiff did not in any way impress upon growers McVickers and Ohlson that they could not sell the turkeys until plaintiff's written consent had been first obtained.

One of the defendant processors testified he had been in the turkey business for thirty-two years; that he had purchased turkeys from farmers at numerous times; that he had never seen any written authorization from mortgage holders relative to sale of turkeys. He said that he just bought the turkeys from the farmers and made his checks payable to the farmers and the feed men; that he had never contacted a feed man; that he had purchased turkeys which were fed by The Quaker Oats Company, and that at no time did The [25] Quaker Oats Company indicate to him that the farmer could sell turkeys only upon its written authorization.

Plaintiff further contends growers had no authority to sell turkeys except for cash and that acceptance of a check, later dishonored by the bank, was not cash, and consequently there was no sale. However, the evidence conclusively shows it was the custom in the turkey industry to pay farmers by check and not by cash, and that the checks were made payable to the farmers and the feed company. At no time did The Quaker Oats Company suggest to anyone in any manner that checks were

not acceptable. In fact, checks were accepted and treated as cash; and in the case at bar the checks which cleared were made payable to the grower and plaintiff and were accepted by the plaintiff, and plaintiff did not in any way indicate to the grower that such checks in payment would not be acceptable. Plaintiff also contends the mortgage which it had on the turkeys was a valid lien until paid and that there was no payment until the checks cleared.

It is defendants' contention, however, that although there was a valid mortgage, nevertheless, the mortgage lien was extinguished when plaintiff allowed the mortgagor who had possession of the turkeys to sell them; and, consequently, defendants obtained the turkeys free and clear of the mortgage lien in question.

This is no new problem in California, for from the earliest times the courts have been called upon to adjudicate disputes arising over the sale of mortgaged crops and chattels. In 1896 the Supreme Court of California, in *Maier vs. Freeman*, 112 Cal. 8, was called upon to determine the rights of a purchaser of mortgaged sheep which, while in [26] possession of the mortgagor, were sold. In that case the court points out that it was part of the agreement between the parties to the mortgage that the mortgagor should sell the sheep but should deposit the net proceeds of the sale to the credit of the mortgagee. The Court quotes from *White Mountain Bank vs. West*, 46 Me. 15, [Page 12 of the California citation] as follows:

“‘from the time of sale the lien of the mortgage was extinguished, and the mortgagee was left with no security but the personal promise of the mortgagor to pay the proceeds to him.’”

The Supreme Court of California then went on to say:

“There are many decisions that the mortgagee of chattels may authorize the mortgagor to sell the encumbered property and apply the proceeds of sale upon the debt secured, and that such an agreement does not render the mortgage fraudulent in law, nor affect the lien thereof prior to the sale [citing cases]; but we have found no case in which the lien was held to attach to the proceeds unpaid by the purchaser.” (Emphasis supplied.)

In *Ramsey vs. California Packing Corporation*, 51 Cal. App. 517, which dealt with the sale of mortgaged crops, the Court said (at page 522):

“* * * Obviously, if the crops were removed by and with the consent of the plaintiff, then they were not wrongfully or tortiously removed, and in that case the lien of the mortgage ceased upon such removal by operation of law.” [27]

In that case (the facts of which are somewhat similar to those in the case at bar) the mortgage holder knew that certain portions of the crop had been removed from the premises and sold yet did not take any steps to prevent further removal and sale. The Court continues, at page 528:

“* * *: for, at the time of the purchase of the tomatoes by the Packing Corporation and the corn

by Powers, the lien of the mortgage had prima facie been extinguished by the removal of those crops from the land on which they were grown [citing cases], and it rested upon the mortgagee, if he would still enjoy the benefit of his mortgage security, to rebut that presumption by showing that the crops were removed without his knowledge and consent and that it was, therefore, a tortious removal. And, as before declared, even if it had been shown that the mortgagors had wrongfully removed the crops and sold the same to a third party, it would still be necessary, to bind the latter in an action for damages for such wrongful removal or for the conversion of the crops, further to show that such removal was tortiously effected with his knowledge or by connivance on his part with those wrongfully removing the crop to effect such removal. * * * This agreement (allowing the mortgagors to sell the mortgaged crops and turn over the proceeds of sale to plaintiff and Emerson) amounted in practical effect to a substitution of the personal obligation of the mortgagors for the security of the mortgage." [28]

In *The Valley Bank vs. Hillside Packing Company*, 91 Cal. App. 738, the bank, after loaning money and taking a chattel mortgage upon an orange crop, authorized delivery of the crop to any packing house selected by the mortgagor. At page 741 the Court said:

"* * * The mortgagor's removal without consent of the mortgagee would be tortious. Consent that he may do so would extinguish the mortgage lien."

H. B. Reno vs. A. L. Boyden Company, 115 Cal. App. 697, concerned a chattel mortgage which had been given on an apiary, honey and other personal property. A portion of the honey stored was sold after recordation of the chattel mortgage. In that case the Court found the plaintiff had given the defendant authority to sell the honey, although the plaintiff testified: "I told him the last time he positively couldn't sell that honey unless he paid me \$500 and all interest to date." The Court said (at page 700) that the evidence "clearly shows that he gave defendant Fassel permission to sell the honey on the latter's promise to pay him out of the proceeds \$500 and the interest due, * * * Fassel having sold with plaintiff's consent, there could be no conversion, either in the sale by him or in the purchase by his co-defendant, * * *"

The Court thereupon ruled (page 702) that where: "the property is sold with the consent of the mortgagee, * * * the latter waives his lien and the buyer is protected by the absolute sale." [29]

In one of the latest cases decided by the California courts, I. S. Chapman & Co. vs. Ulery, 15 Cal. App. 2d 452, the Court, after reviewing prior decisions of the California courts relative to the effect of selling mortgaged property with consent of the mortgagee, reiterates the rule that where mortgaged property is sold with consent of the mortgagee, the mortgagee thereupon loses his lien.

In the case at bar the evidence discloses that plaintiff allowed growers to sell turkeys to anyone who would purchase them. When plaintiff per-

mitted the growers to sell mortgaged property, the mortgagee thereupon lost its lien, and removal of the turkeys in question from the ranch of the growers was not tortious.

As a consequence, judgment will be rendered in favor of defendants herein. Counsel for defendants will prepare findings of fact, conclusions of law and judgment in conformity with the opinion expressed herein for presentation for signature on or before the 15th day of May, 1954.

Dated: May 5, 1954.

/s/ HARRY C. WESTOVER,

District Judge

[30]

[Endorsed]: Filed May 5, 1954.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on February 24, 1954, before Hon. Harry Westover, Judge Presiding in said Court sitting without a jury, a jury having been expressly waived, George R. Maury, Esq., appearing for plaintiff, Frank C. Nimocks, Esq., appearing for defendants W. E. McKibben, O. R. Lewis and A. B. Carter, and defendant Charley Geers appearing in propria persona; and evidence both oral and documentary having been introduced and the cause sub-

mitted for decision, the Court now makes its findings of fact as follows:

Findings of Fact

1. Harry McVickers and Carl W. Ohlson are turkey growers near Hemet, Riverside County, California. Plaintiff is in the business of providing poultts for turkey growers; poultts were furnished to McVickers and Ohlson and, subsequently, feed was furnished by [31] plaintiff; a chattel mortgage was obtained from each of the turkey growers, which was duly acknowledged and recorded in Riverside County, California. At the time of the execution of the chattel mortgage an additional contract was entered into between the parties by which McVickers and Ohlson agreed not to sell any of the turkeys without first having obtained plaintiff's written consent. These contracts were never recorded.

2. Defendants John J. Couch and Charley Geers were hucksters, who were in the business of buying turkeys from growers, transporting the turkeys to the market in Los Angeles, California, and selling them to processors. The processors slaughtered the turkeys and sold them either to wholesalers or retailers for ultimate consumption by the general public.

3. Defendant Couch appeared at the ranches of McVickers and Ohlson and purchased the turkeys involved in this proceeding, paying for said purchases by checks, made payable to the growers and to the plaintiff. The turkeys were transported from

Riverside County to Los Angeles where they were sold, without prior actual knowledge of plaintiff's claim by defendants McKibben, Carter and Lewis, to defendants McKibben, Carter and Lewis, who paid the going market price to the hucksters for same. All checks given by Couch and/or Geers in payment for turkeys involved herein were never honored by the bank on which they were drawn for the reason there were not sufficient funds in the account to pay the checks when presented. One check given for the first purchase of turkeys from McVickers was subsequently deposited and honored by the bank on which it was drawn. At the time defendant Couch gave the checks for the purchase of the turkeys there was sufficient money in the bank to cover the checks but by the time the checks were presented for payment the account had been depleted to such extent that the checks were not honored.

4. It is true that, notwithstanding the written unrecorded [32] contracts between plaintiff and growers, it was the custom of plaintiff to allow its growers to sell their turkeys, the only requirement of plaintiff being that if checks were given in the sales, those checks must be made payable jointly to the grower and to plaintiff. It is also true that plaintiff never complained because of any grower's sale of turkeys without first having obtained the prior written consent of plaintiff and that no prior written consent of plaintiff was obtained before any of the sales of the turkeys involved herein. It is also true that the foregoing practices were the practices

generally followed throughout the turkey raising industry.

5. It is true that although all the transactions involved herein were carried on by payment by check, all parties treated the same as cash transactions.

6. That the allegations contained in paragraphs 1, 3, 4, 5 and 6 of said complaint are true.

7. That the allegations contained in paragraph 2 of said complaint are untrue; it is true that defendants W. E. McKibben and A. B. Carter, at all times mentioned in said complaint, were citizens of the State of California and residents within said district and division and were doing business under the fictitious name and style of Downey Rabbit & Poultry Company; it is true that defendant O. R. Lewis, at all times mentioned in said complaint, was a citizen of the State of California and a resident within the said district and division and was doing business under the fictitious name and style of Thrifty Poultry Company.

8. That the allegations contained in paragraphs 7 and 8 of said complaint are not true.

9. That the allegations contained in paragraphs I, II and III of Separate and Distinct Defense of Answer of defendants W. E. McKibben, A. B. Carter and O. R. Lewis, are true. [33]

Conclusions of Law

1. This Court has jurisdiction of the parties and of the subject matter.

2. The mortgages held by plaintiff on the turkeys

of McVickers and Ohlson were valid and subsisting prior liens against said turkeys until the date of sale of said birds by the growers to Couch and/or Geers.

3. That plaintiff's mortgage lien on said turkeys was extinguished by plaintiff's allowing growers to sell said birds, said practice being, in law, the equivalent to plaintiff's waiving its lien rights. Therefore, the sales to defendants did not constitute a conversion of said birds and title to said birds passed to defendants free and clear of any claims of plaintiff.

4. That all sales herein were cash sales.

5. That all defendants are entitled to judgment as against plaintiff on said complaint, and are entitled to their costs expended.

Dated this 7th day of June, 1954.

/s/ HARRY C. WESTOVER,

Judge of U. S. District Court [34]

Affidavit of Service by Mail attached.

[Endorsed]: Lodged May 17, 1954.

[Endorsed]: Filed June 7, 1954.

In the District Court of the United States, Southern District of California, Central Division

No. 14690-HW

THE QUAKER OATS COMPANY, a corporation,
Plaintiff,

vs.

JOHN J. COUCH, et al, Defendants.

FINAL JUDGMENT

The above-entitled cause came on regularly for trial on February 24, 1954, before Hon. Harry Westover, Judge Presiding in said Court sitting without a jury, a jury having been expressly waived, George R. Maury, Esq., appearing for plaintiff, Frank C. Nimocks, Esq., appearing for defendants W. E. McKibben, O. R. Lewis and A. B. Carter, and defendant Charley Geers appearing in propria persona; and the Court having heard the testimony and having examined the proofs offered by the respective parties; and the Court being fully advised in the premises and having filed herein its findings of fact and conclusions of law and having directed that judgment be entered in accordance therewith;

It Is Hereby Ordered, Adjudged and Decreed:

1. This court has jurisdiction of the parties and of the subject matter hereof. [35]

2. That plaintiff take nothing by its complaint and that judgment will be entered herein in favor of defendants W. E. McKibben, A. B. Carter, O. R.

Lewis and Charley Geers on said complaint and for defendants' costs expended herein.

Dated this 7th day of June, 1954.

/s/ HARRY C. WESTOVER,

United States District Judge [36]

Affidavit of Service by Mail attached.

[Endorsed]: Lodged May 17, 1954.

[Endorsed]: Judgment Docketed and Entered June 7, 1954.

[Endorsed]: Filed June 7, 1954.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on trial on the 24th day of February, 1954, before Honorable Harry C. Westover, District Judge in the United States District Court, Southern District of California, Central Division, before the court, sitting without a jury, a jury having been waived, George R. Maury appeared as counsel for plaintiff and the defendant, Charley Geers, appeared in pro-per, and the court having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted to the court for decision, and the court being fully ad-

vised in the premises, now makes its findings of fact as follows:

Findings of Fact

1. That on or about August 2, 1952, plaintiff, a corporation organized under the laws of the State of New Jersey, was doing business within the State of California and was engaged in the business of providing poults for turkey growers and furnishing feed for the turkeys until maturity.

2. That in August, 1952, the defendants, Charley Geers and John J. [37] Couch, were hucksters engaged in the business of buying turkeys from growers, transporting turkeys to market in Los Angeles, California and selling them to processors; that the defendant, John J. Couch's main duty was to contact the farmers, buy the turkeys and transport them to Los Angeles, California where they were turned over to the defendant, Charley Geers, for sale; that the main duty of the defendant, Charley Geers was to collect from processors and to deposit the proceeds in the bank.

3. That on or about August 2, 1952 plaintiff was the owner and holder of two chattel mortgages pertaining to approximately 1500 live turkeys; one chattel mortgage was executed by Carl W. Ohlson and Marian T. Ohlson and was recorded in Book 1356, page 574, records of Riverside County; and the second mortgage was executed by Harry T. McVickers and Ruth E. McVickers and recorded in Book 1356, page 541, records of Riverside County. That these mortgages were executed as security for poults and feed furnished by plaintiff to Harry T.

McVickers and Ruth E. McVickers and Carl W. Ohlson and Marian T. Ohlson.

4. That at the time of the execution of the chattel mortgages an additional contract was entered into between Harry T. McVickers and Ruth E. McVickers and Carl W. Ohlson and Marian T. Ohlson by which Harry T. McVickers and Ruth E. McVickers, and Carl W. Ohlson and Marian T. Ohlson agreed not to sell any of the turkeys without written consent of plaintiff; that this written contract was not recorded.

5. That in the month of August, 1952 turkeys were purchased in Riverside County from Harry T. McVickers and Ruth E. McVickers by John J. Couch who gave Harry T. McVickers and Ruth E. McVickers checks payable to Harry T. McVickers and Ruth E. McVickers and Quaker Oats Company; that these checks were signed by Harry T. McVickers, Ruth E. McVickers and Quaker Oats Company and were accepted by Quaker Oats Company and deposited in the regular course of business; that these [38] checks in payment for the first batch of turkeys purchased were refused by the bank as there was not sufficient funds on deposit to pay said checks; that these checks were later deposited by plaintiff and were paid; that at the time of the purchase of these turkeys Harry T. McVickers and Ruth E. McVickers did not have written consent from Quaker Oats Company to sell said turkeys and Quaker Oats did not notify Harry T. McVickers and Ruth E. McVickers or defendant, Charley Geers, that they did not have the right

to sell turkeys without obtaining plaintiff's written consent.

6. That in the month of August, 1952 the defendant, John J. Couch, purchased turkeys from Carl W. Ohlson and Marian T. Ohlson and paid for the turkeys by a check payable to Carl W. Ohlson and Marian T. Ohlson and Quaker Oats; that at the time of the purchase of these turkeys Carl W. Ohlson and Marian T. Ohlson did not have written consent from the plaintiff to sell said turkeys; that the plaintiff accepted said checks and deposited them in the regular course of business and at no time notified Carl W. Ohlson and Marian T. Ohlson or the defendant, Charley Geers, that they did not have the right to sell said turkeys without first obtaining plaintiff's written consent.

7. That all of the checks, other than the checks given to Harry T. and Ruth E. McVickers for the purchase of the first batch of turkeys, given in payment for turkeys were not paid by the bank as there was not sufficient funds on deposit with which to pay these checks; that at the time these checks, on which payment was refused by the bank, were given by John J. Couch to the growers and plaintiff there was sufficient money on deposit in the bank to cover the amount of the checks.

8. That the plaintiff allowed the growers, Harry T. McVickers and Ruth E. McVickers, Carl W. Ohlson and Marian T. Ohlson to sell turkeys to the defendants, John J. Couch and Charley Geers and did not require written consent to be given to Harry T. McVickers and Ruth E. [39] McVickers, Carl

W. Ohlson and Marian T. Ohlson before making said sales.

9. That plaintiff permitted Harry T. McVickers and Ruth E. McVickers and Carl W. Ohlson and Marian T. Ohlson, growers in possession of the turkeys, to sell said turkeys without securing written permission from plaintiff and that plaintiff's lien was extinguished and the defendant, Charley Geers, obtained the turkeys free and clear of the mortgage lien and the removal and sale of the turkeys was with plaintiff's consent and the removal and sale of the turkeys was not tortious.

10. That at the time of the purchase of said turkeys by John J. Couch and Charley Geers from Harry T. McVickers and Ruth E. McVickers and Carl W. Ohlson and Marian T. Ohlson the plaintiff had lost its lien as they had given consent to Harry T. McVickers and Ruth E. McVickers and Carl W. Ohlson and Marian T. Ohlson to sell turkeys without consent of the plaintiff.

11. That the custom in the turkey industry in August of 1952 was to pay farmers by check payable to the farmers and to the feed company and that the custom in the turkey business was that these checks would be accepted and were treated as cash.

12. That each and all of the allegations set forth in Paragraphs VI, VII, and VIII, inclusive, of plaintiff's complaint are untrue.

13. That each and all of the allegations set forth in Paragraphs IV and V of defendant's answer and defendant's first affirmative defense are true.

From the foregoing facts, the Court concludes:

Conclusions of Law

1. That plaintiff is not entitled to judgment against defendant.
2. That defendant be given judgment for his court costs.

Done in Open Court this 7th day of June, 1954.

/s/ HARRY C. WESTOVER,

District Judge [40]

Affidavit of Service by Mail attached. [41]

[Endorsed]: Lodged May 26, 1954.

[Endorsed]: Filed June 7, 1954.

In the United States District Court for the Southern District of California, Central Division

No. 14690-HW

THE QUAKER OATS COMPANY, a corporation,
Plaintiff,

vs.

JOHN J. COUCH, CHARLEY GEERS, D. R.
LEWIS, et al., Defendants.

JUDGMENT

The above entitled cause having come on regularly for trial on the 24th day of February, 1954, before the Honorable Harry C. Westover, District

Judge in the United States District Court, Southern District of California, Central Division, before the court, sitting without a jury, a jury having been waived, George R. Maury appearing as counsel for plaintiff and the defendant, Charley Geers, appearing in pro-per, the court having heard all the testimony, and having examined the proofs offered by the respective parties, and the cause having been submitted to the Court for decision and the Court being fully advised in the premises and having filed herein its findings of fact and conclusions of law, and having directed that judgment be entered in accordance therewith:

Now, Therefore, by reason of the law and the findings aforesaid:

It Is Hereby, Ordered, Adjudged and Decreed:

I.

That plaintiff take nothing by his suit filed herein and that the defendant have judgment against the plaintiff for costs of suit [42] in the sum of \$.

Dated this 7th day of June, 1954.

/s/ HARRY C. WESTOVER,

District Judge

[43]

[Endorsed]: Lodged May 26, 1954.

[Endorsed]: Judgment Docketed and Entered June 7, 1954.

[Endorsed]: Filed June 7, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that The Quaker Oats Company, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from that certain judgment herein docketed and entered on June 7, 1954, in the above entitled action in favor of the defendants W. E. McKibben, A. B. Carter, O. R. Lewis, and Charley Geers and against the plaintiff herein, wherein said judgment, among other things, states as follows, in part:

“It Is Hereby Ordered, Adjudged and Decreed:

“1. This court has jurisdiction of the parties and of the subject matter hereof.

“2. That plaintiff take nothing by its complaint and that judgment will be entered herein in favor of defendants W. E. [44] McKibben, A. B. Carter, O. R. Lewis and Charley Geers on said complaint and for defendants’ costs expended herein.”

Said appeal is taken from said judgment and from all thereof.

Dated: June 11, 1954.

MAURY, LARSEN & HUNT,
/s/ By GEORGE R. MAURY,
Attorneys for Plaintiff [45]

[Endorsed]: Filed June 17, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that The Quaker Oats Company, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from that certain judgment herein docketed and entered on June 7, 1954, in the above entitled action, as submitted by the defendant Charley Geers, and which reads, among other things, as follows, in part:

“It Is Hereby Ordered, Adjudged and Decreed:

I.

“That plaintiff take nothing by his suit filed herein and that the defendant have judgment against the plaintiff for costs of suit in the sum of \$.” [46]

Said appeal is taken from said judgment and from all thereof.

Dated: June 11, 1954.

MAURY, LARSEN & HUNT,
/s/ By GEORGE R. MAURY,
Attorneys for Plaintiff [47]

[Endorsed]: Filed June 17, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 52, inclusive, contain the original Complaint; Separate Answers of W. E. McKibben, et al., John J. Couch, etc., and Charley Geers; Pre-trial Stipulation; Memorandum of Opinion; Findings of Fact and Conclusions of Law as to Defendants W. E. McKibben, et al., and as to Charley Geers; Judgment as to Defendants W. E. McKibben, et al., and as to Charley Geers; Two Notices of Appeal; Designation of Record on Appeal and Order Extending Time to Docket Appeals which, together with the Reporter's Transcript of Proceedings on trial and the original exhibits, transmitted herewith, constitute the transcript of record on appeals to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 4th day of August, A.D. 1954.

[Seal]

EDMUND L. SMITH,
Clerk

/s/ By THEODORE HOCKE,
Chief Deputy

In the United States District Court for the Southern District of California, Central Division

No. 14690-HW—Civil

THE QUAKER OATS COMPANY, Plaintiff,

vs.

JOHN J. COUCH, et al., Defendants.

TRANSCRIPT OF PROCEEDINGS

Los Angeles, Calif., February 24 and 25, 1954

Honorable Harry C. Westover, Judge Presiding.

Appearances: For the Plaintiff: George R. Maury, Esq., 3460 Wilshire Blvd., Los Angeles 5, Calif. For the Defendants W. E. McKibben, A. B. Carter, O. R. Lewis: Frank C. Nimocks, Esq., 11017 So. New St., Downey, Calif. For the Defendant Charles Geers: In Propria Persona. [1*]

Los Angeles, Feb. 24, 1954, 10:00 o'clock a.m.

The Clerk: No. 14690, HW, Civil, Quaker Oats Company vs. John J. Couch, et al.

Mr. Maury: The plaintiff is ready, your Honor.

Mr. Nimocks: The defendants McKibben, Carter and Lewis are ready.

The Court: You may proceed.

Mr. Maury: One of the defendants, Mr. Charles Geers, is appearing in propria persona. He is pres-

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

ent in court, has filed an answer in pro per. For the plaintiff I will call Mr. Geers as a witness.

CHARLES GEERS

a defendant herein, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Charles Geers.

Direct Examination

Q. (By Mr. Maury): Mr. Geers, calling your attention to the period of the months of July and August in 1952, will you state to the court what was your occupation at that time?

A. I was in the trucking business with John Couch.

Q. With John Couch? A. Yes. [3]

Q. Will you describe what you did in that trucking business?

A. I was engaged in buying poultry.

Q. What did you do with the poultry after you bought it? A. Sold it to processors.

Q. From whom did you buy the poultry?

A. From the growers.

Q. What was the arrangement between you and Mr. Couch?

A. Well, from the beginning?

Q. Just tell the court what the arrangement was.

The Court: We are not interested in any other arrangement except this purchase.

The Witness: Well, now, on these dates, it has

(Testimony of Charles Geers.)

been quite a while ago. I didn't have a copy of the answer I filed with the court. The dates I can't be sure of. The rest of my testimony I can.

Q. (By Mr. Maury): Calling your attention to this document—which I ask be marked as Plaintiff's Exhibit 1 for identification.

The Court: It may be marked Plaintiff's Exhibit 1 for identification.

The Clerk: 1 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 1 for identification.)

Q. (By Mr. Maury): I hand you Plaintiff's Exhibit 1 for identification. Does that refresh your memory as to any date? A. Does what?

Q. Does that refresh your memory as to any date? [4] A. That does, yes, sir.

Q. Is that your signature upon that check?

A. Yes, sir.

Q. Did you sign it? A. Yes, sir.

Q. Did you give it to this man, C. W. Ohlson?

A. I didn't fill it in. I signed the check.

Q. You signed the check? A. Yes.

Q. Do you know whose handwriting that is filled in in?

A. No. It must be the boy that had our truck.

Q. But it is your signature? A. Yes, sir.

Q. Did you authorize the boy that had your truck to fill it in? A. Yes.

Q. And hand it to Ohlson?

A. He was paying Ohlson that much on the sale for his turkeys, on the side.

(Testimony of Charles Geers.)

Q. On the side, what do you mean?

A. I think that same day there was a check made to Ohlson and Quaker Oats.

Mr. Maury: May this be marked as the Plaintiff's Exhibit next in order for identification?

The Court: It may be marked Plaintiff's Exhibit 2.

The Clerk: Plaintiff's Exhibit 2 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 2 for identification.) [5]

Q. (By Mr. Maury): At this time we will offer Exhibit 1, your Honor. The witness says it is his signature.

The Court: It may be received in evidence.

The Clerk: Plaintiff's Exhibit 1 in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit 1.)

Q. (By Mr. Maury): Calling your attention to Plaintiff's Exhibit 2 for identification, is that also your signature at the bottom thereof?

A. Yes, sir.

Q. Did you fill that in? A. No, sir.

Q. Who did, if you know?

A. John Couch.

Q. John Couch. Did he give it to Mr. Ohlson, if you know?

Mr. Nimocks: Just a moment. I will object to that as assuming a fact not in evidence, a conclusion.

Mr. Maury: If he knows.

(Testimony of Charles Geers.)

The Court: The question is, did you give it? What is the conclusion in that?

Mr. Nimocks: He said, "Did he give it to him."

Mr. Maury: That is the question, your Honor. Did Mr. Couch give it to Mr. Ohlson, if the witness knows.

The Witness: I don't know. At that particular time we had on that same date another deal to buy some chickens, and we had two trucks and I went out there with them, Couch was there and two fellows that worked for us, and I took one truck [6] after I had made those checks and went on.

Q. Did you make out the amounts or just hand out blank signed checks?

A. No. I made that for John.

Q. And handed it to John? A. Yes.

Q. Is that true, also, of Plaintiff's Exhibit 1, you handed that to John Couch? A. Yes.

Mr. Maury: For your Honor's information, I might state Mr. Couch has departed this life and is no longer before the court. I have investigated and found no estate is pending in Riverside, the county of his residence, and consequently we should now ask that the action be abated as to him. He was killed in an automobile accident.

Q. To continue, what did you receive in exchange for that check?

A. A number of turkeys. I don't remember the exact amounts.

Q. How many, approximately?

A. I don't remember. A truckload.

(Testimony of Charles Geers.)

Mr. Maury: We offer now Plaintiff's Exhibit 2 in evidence, your Honor.

The Court: It may be received.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 2.)

The Court: Do you know where these turkeys were that were purchased by Exhibits 1 and 2?

The Witness: The location of them? [7]

The Court: The location of the turkeys when they were bought.

The Witness: They were near Perris.

The Court: In Riverside County?

The Witness: Yes, sir.

Q. (By Mr. Maury): Were they on the ranch of Mr. Ohlson, the payee named on those checks?

A. Yes, sir. I assume it is his ranch.

Q. Did you see the turkeys? A. Yes.

Q. You were there and saw the turkeys?

A. Yes, sir.

Q. Who else was there at the time you had that transaction? A. Mr. Ohlson.

Q. Did you talk with Mr. Ohlson about buying turkeys?

A. Yes. I talked to Bill Brooks, the Quaker Oats representative, to begin with.

Q. Did you talk with Mr. Ohlson at the time you bought the turkeys? A. Yes, sir.

Q. Was anybody else there?

A. John Couch.

Q. Who else?

(Testimony of Charles Geers.)

A. A colored boy, I believe that worked for us.

Q. Tell us what was said at that time.

Mr. Nimocks: I shall object to that question insofar as it applies to the defendants McKibben, Carter and Lewis; hearsay.

Mr. Maury: That objection is well taken.

The Court: Oh, the objection is overruled. There is no jury here and the court will take into consideration the hearsay testimony. It only applies to certain defendants.

Mr. Nimocks: Thank you.

The Witness: The question again?

(Question read.)

The Witness: I couldn't tell you word for word.

Q. (By Mr. Maury): Of course, but will you give us the substance of it?

A. Well, now, I think that is the second time we bought turkeys from Mr. Ohlson. I am not sure. We bought from him two different times.

Q. Was it on the occasion of the giving of these checks?

A. Was that the first time or the second?

Q. I don't know.

A. I don't recall, either. The conversation would be much different the second time you dealt with a man.

Q. Were these checks ever paid, Plaintiff's Exhibits 1 and 2?

A. Not to my knowledge. [9]

Q. After you got these turkeys, what did you

(Testimony of Charles Geers.)

do with those turkeys that you got from the Ohlson ranch?

A. I don't recall who they were sold to.

Q. What did you do with them is the question, sir?

A. We hauled them to market and sold them.

Q. To what market?

A. To Los Angeles.

Q. You hauled them all the way to Los Angeles?

A. I don't remember who each particular load went to.

Q. You don't remember, but you know you did haul them to Los Angeles? A. Yes.

Q. And you did sell them?

A. I didn't personally.

Q. Who did? A. John.

Q. Couch sold them? A. Yes.

Mr. Maury: May this be marked Plaintiff's Exhibit next in order for identification?

The Court: It may be marked Plaintiff's Exhibit 3 for identification.

The Clerk: Plaintiff's Exhibit 3 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 3 for identification.)

Q. (By Mr. Maury): Calling your attention to this check, Mr. Geers, is this signed by you, Plaintiff's Exhibit 3 for identification? A. Yes.

Q. Who filled in the body of that?

A. I did.

Q. It is all in your handwriting?

(Testimony of Charles Geers.)

A. Yes.

Q. In the upper left-hand corner is the inscription there also in your handwriting? A. Yes.

Q. Which reads, "Park Avenue Poultry," and gives an address and phone? A. Yes.

Mr. Maury: We offer this in evidence as Plaintiff's Exhibit 3.

The Court: It may be received in evidence as Plaintiff's Exhibit 3.

The Clerk: Plaintiff's Exhibit 3 in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 3.)

Mr. Maury: May this be marked as Plaintiff's Exhibit 4 for identification?

The Court: It may be marked Plaintiff's Exhibit 4 for identification. [11]

(The document referred to was marked Plaintiff's Exhibit No. 4 for identification.)

Q. (By Mr. Maury): Calling your attention to Plaintiff's Exhibit 4 for identification, is that your signature at the bottom of it? A. No.

Q. It is not your signature? A. No.

Q. Who wrote it, do you know?

A. I have no idea.

Q. No idea? A. It is not mine.

Q. Is the handwriting in the upper portion of the check yours?

A. No. I was not even present or even, I don't think, still connected.

(Testimony of Charles Geers.)

Mr. Nimocks: Excuse me, counsel. What was the amount of the check?

Mr. Maury: August 13, 1952, \$1,365.90.

Q. You state that was not given by you?

A. I am positive.

Q. And that no part of the handwriting on that check is yours? A. No.

Q. Do you know whether John Couch wrote your name there? [12]

A. I have a good comparison here. That is the reason I dug these old ones out and brought them along.

Mr. Maury: May the record show that the witness has handed me a check identical, on the same bank, as the one which is Plaintiff's Exhibit 4 for identification, with the signature of John J. Couch. I would like to offer that as an exemplar of the signature of Couch, your Honor, together with Plaintiff's Exhibit 4.

The Witness: Here is another one.

Mr. Maury: The witness has handed me another.

The Court: You mean to say you want both checks put together?

Mr. Maury: I would like to offer them in evidence in conjunction with Plaintiff's Exhibit 4 so that the court may consider them.

The Court: Suppose we mark that 4-A?

Mr. Maury: Thank you. Then that will be very clear.

The Clerk: Plaintiff's Exhibit 4-A for identification.

(Testimony of Charles Geers.)

(The document referred to was marked Plaintiff's Exhibit 4-A for identification.)

Mr. Maury: Now, may this be marked Plaintiff's Exhibit 5 for identification?

The Court: Plaintiff's Exhibit 5 for identification.

The Clerk: 5 for identification. [13]

(The document referred to was marked Plaintiff's Exhibit No. 5 for identification.)

Q. (By Mr. Maury): Calling your attention to Plaintiff's Exhibit 5 for identification, is that your signature at the bottom of that? A. Yes.

Q. Is the whole check in your handwriting?

A. Yes.

Mr. Maury: We offer 5 in evidence, your Honor.

The Court: It may be received.

Mr. Nimocks: What is the amount?

The Clerk: Plaintiff's Exhibit 5 in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 5.)

Mr. Maury: \$1,490.60.

Q. Calling your attention now to Plaintiff's Exhibit 3, were you present when that was handed to the payee, McVicker, named therein?

A. I believe I was, yes, sir.

Q. Who else was present?

A. John Couch.

Q. Was anybody else present at that time?

A. Possibly one or two fellows that work for him.

Q. But that was all?

(Testimony of Charles Geers.)

A. To my knowledge, yes. [14]

Q. Will you state to the court what was said by you and by Mr. Couch and by Mr. McVicker?

Mr. Nimocks: I make the same objection on all these.

The Court: Same objection and same ruling.

Q. (By Mr. Maury): What is the answer, Mr. Witness?

A. What was said by Mr. Couch, myself, and Mr. McVicker, is that the question?

Q. Yes, that's right.

A. Well, we talked of buying the turkeys, and John made a bargain with him, and he bought them.

Q. Do you know how many turkeys?

A. No, sir, I don't.

Q. Do you have any record of weights that you purchased?

A. John had every record we had, the whole works.

Q. On any of these occasions?

A. He did it all. I have been unable to find that. His attorney doesn't have it.

Q. Were you and he partners?

A. In a sense of the word. We had a working agreement on the sharing of profits, of which there were evidently none.

The Court: How about the sharing of the losses?

The Witness: I don't know. Well, I didn't have any set—at the time I was working for him, I drew around \$75 a week. We were supposed to share and share alike. How come me to be [15] in with him

(Testimony of Charles Geers.)

to begin with, he was about to lose one of his trucks, and I had a good job and good credit, so he wanted me to take the truck over, which I did, and then the used car business was slow, wasn't making too much, putting in a lot of hours, and I didn't know what the turkey business was until I got in it. I found there was a lot of work in it.

Q. (By Mr. Maury): This bank account on which you signed these checks, was that a joint bank account of you and Mr. Couch?

A. It was joint in that I had the privilege of checking on it.

Q. And so did he?

A. It was his account. He opened the account. He had a bank account with one of the branches of, I think, Security National, and he opened an account down there. He told me at the time he opened it that he was going to deposit \$4,000 in the account to buy with, and if I would go to work for him or with him, however you want to put it, that he would handle all the marketing and whatnot, because he understood that end of it, he knew where to sell, if I would go out and tend to the trucking end of it and the buying, which I found myself doing more and more. I think you understand the reason now for all that.

Q. Let's get back to the time you had this transaction evidenced by the August 8 check. [16]

A. August 8?

Q. Yes. Tell us all that you can remember about that transaction at that time.

(Testimony of Charles Geers.)

A. Well, I think these turkeys that we were buying were bought prior to August 8. I think they were bought possibly the day or two days ahead of that time, because the checks on these things, according to Couch's instructions, all the money, he wanted me to date the checks ahead a day or two.

Q. And you did date them ahead a day or two?

A. Yes, I think so.

Q. That would be about August 6 that you took possession of the turkeys?

A. 6th or 7th. Might have been on the 8th. I don't remember.

Q. You immediately put them in trucks?

A. Yes, sir.

Q. And took them away? A. Yes.

Q. To the Los Angeles market? A. Yes.

Q. And sold them as quickly as you could, is that true? A. Yes.

Q. You don't know how many turkeys you received in exchange for Plaintiff's Exhibit 3? [17]

A. No, sir, I don't.

The Court: May I ask a question?

Mr. Maury: Yes.

The Court: You say Couch said he was going to put \$4,000 in this bank account. Did you put any money in the account?

The Witness: No, none whatsoever.

The Court: Did you go down to the bank and open up the account with Couch?

The Witness: No, sir.

The Court: Did Couch have that bank account

(Testimony of Charles Geers.)

before you went into business with him, so far as you know?

The Witness: No, not that one. He closed out his account at one of the Security banks.

The Court: This was a new account, was it?

The Witness: Yes, sir. About, oh, I think a week or more after he had opened this account, the only money I had invested in the deal, I borrowed \$500 and bought the secondhand truck.

The Court: You didn't go down to the bank when the account was opened up?

The Witness: No, sir.

The Court: You evidently had a right to draw upon the account. Where did you sign the signature card?

The Witness: I signed on the second line. He went down and made out a new signature card on the account. [18]

The Court: You didn't go down to the bank to sign it?

The Witness: Yes, sir.

The Court: You did?

The Witness: Yes, sir.

The Court: And you signed the signature card?

The Witness: Yes, sir.

The Court: Did you do anything else at the bank besides sign the signature card?

The Witness: No, sir, nothing.

Q. (By Mr. Maury): Do you know whether that was a joint signature card or power of attorney to you? A. I don't know.

(Testimony of Charles Geers.)

The Court: You have the signature card here, I suppose?

Mr. Maury: I have the banker here and he tells me it is over in Riverside in the Superior Court.

Q. On August 12 you issued this check, Exhibit 5, for \$1,490.60. Did you personally hand that to Mr. McVicker? A. I imagine I did.

Q. Was there anyone else present?

A. Well, John would always in those cases go out and help me load, so I imagine he was there.

Q. And Mr. McVicker, of course, was there? Was anyone else present?

A. Well, we always had at least one or two fellows help us. [19]

Q. But nobody else was there?

A. One time he had one of his neighbors help.

Q. Mr. McVicker had a neighbor help?

A. Yes.

Q. Then on any of these occasions was anybody present except Mr. McVicker and possibly a neighbor or helper, and you and Mr. Couch and your helper?

A. You mean a representative of Quaker Oats?

Q. I am asking about anybody.

A. Well, now, this has been two years ago, almost.

The Court: May I ask a question?

Mr. Maury: Surely, sir.

The Court: I notice these checks are made out, at least some of them are made out jointly to not only the seller, but the Quaker Oats Company. Did

(Testimony of Charles Geers.)

you know when you made out these checks that the Quaker Oats Company claimed a lien on the turkeys?

The Witness: Yes, sir. That is how come us to get a lead on where to buy them. The Quaker Oats representative approached us at the scales in Perris, a fellow by the name of Bill Brooks, and asked us to buy these turkeys.

Q. (By Mr. Maury): When was that?

A. That was before we ever dealt with Ohlson.

Q. When was that?

A. I couldn't tell you. I couldn't tell you whether May, [20] June, July, or August.

Q. Was it the year of 1952? A. Yes.

Q. Where?

A. At Perris at the scales.

Q. At the scales there? A. Yes.

Q. How did you know he was Mr. Brooks?

A. He gave me his card.

Q. How long before these transactions was it?

The Court: What did you say his name was?

The Witness: Bill Brooks, William Brooks.

The Court: You say he gave you a card?

The Witness: Yes.

The Court: Have you got the card?

The Witness: No, sir.

The Court: What did the card have on it?

The Witness: He was field service representative or something for Quaker Oats.

The Court: You are sure it said Quaker Oats Company on it?

(Testimony of Charles Geers.)

The Witness: Yes.

The Court: All right.

Q. (By Mr. Maury): When was it with reference to these transactions? [21]

A. Well, now, I can't remember. We had two dealings with Ohlson. I believe we bought hen turkeys first or possibly tom turkeys, or vice versa, one way or the other, and probably two or three weeks or something like that later before we bought the last bunch from him. That is the best of my knowledge.

Q. In other words, you had this conversation with Mr. Brooks about two or three weeks before you bought these turkeys?

A. No. The first time we bought from Ohlson or the first time we went to talk to him, we had had a conversation with Brooks prior to that about a week.

Q. What did Brooks say and what did you say in this conversation?

A. He asked, in fact, I don't think John was there, I am not sure, but he asked me—we had fryers we were hauling and we went in there to weigh, and he asked who we worked for or who we represented. I told him John Couch.

He asked if we were buying any turkeys and what kind of price we were paying. There was quite a hassle to get an extra penny or half penny, and I told him he would have to talk to John, and he said that won't be necessary. He said, "I have got a couple of bunches in this area and if you

(Testimony of Charles Geers.)

will go to those fellows and tell them you talked to me," or something, I have forgotten exactly what it was, but he stated they had them [22] to sell.

The Court: Where did he tell you to go?

The Witness: He told us where the farmers' places was.

The Court: Who did he tell you to see?

The Witness: Ohlson. Ohlson, I think, sent us to see McVicker.

Q. (By Mr. Maury): Did he ever tell you Ohlson or McVicker or the Quaker Oats Company would accept bad checks in payment?

A. I don't believe we went into that.

Q. Didn't discuss that? A. No.

Q. Didn't discuss payment at all, did you?

A. I don't remember exactly whether we did or not, sir. I think basically you have to deal with the farmer, anyway.

Q. Tell us what you remember of what happened. A. When?

Q. As well as you can remember. Was anything said by you or Brooks respecting payment?

Q. You think he mentioned that they were paid by check?

A. I think he mentioned that they were paid by check?

A. Okay. I am assuming. I am thinking to the best of my knowledge. You said, "the best you can remember."

Q. I want the best you can remember.

A. I can say I don't remember then. [23]

(Testimony of Charles Geers.)

Q. You don't remember? A. No.

Q. You don't remember anything Mr. Brooks said about payment, is that right?

A. I don't remember.

Q. You don't remember? A. That's right.

Q. I am going to ask you, was anything said about payment that you remember?

A. I don't recall of even discussing payment with him.

The Court: Just a minute. You said something a while ago that Brooks said they had some turkeys. What did Brooks actually say about Quaker Oats?

The Witness: I believe that is the way he put it.

The Court: Did he say Quaker Oats Company?

The Witness: He said—I don't know how he did say it, clients, or one of their customers had some turkeys that were ready for market.

The Court: One of their customers had some turkeys?

The Witness: Yes.

The Court: Did he say anything about the Quaker Oats Company having a bill against the turkeys?

The Witness: He said they had furnished the feed for them. I think that is pretty common practice in the feed business. I don't know too much about it. [24]

The Court: When you got down to buy these turkeys, who told you to put Quaker Oats Company's name on the check?

(Testimony of Charles Geers.)

The Witness: I don't recall whether it was him or whether it was the grower.

The Court: Brooks wasn't present at the time the sale was made?

The Witness: No, sir, he was not. I believe it was the grower.

The Court: The grower told you to put the Quaker Oats Company's name on the check?

The Witness: I believe it was, yes.

The Court: When you made these checks out, you knew that the Quaker Oats Company had some kind of a claim on the turkeys or the money representing the turkeys?

The Witness: Yes, I assumed that they did. This was all completely new to me. I had never been in this business and I hope I am never unfortunate to get in it again.

Q. (By Mr. Maury): Have you ever made any of these checks which you signed good?

A. I think you have one that was cleared.

Q. I am talking about ones that are in evidence before you. A. No, sir.

Q. Exhibits 1, 2, 3, and 5. A. No, sir.

Q. You knew they were all dishonored at the bank, did [25] you not?

A. I did not know it until after I had quit Couch.

Q. You haven't paid anything on account, have you? A. No, sir.

Q. After you put these birds aboard the truck,

(Testimony of Charles Geers.)

do you remember what market you went to in Los Angeles to sell them?

A. I think I only went one time.

Q. Where was that one that you went to that one time, sir?

A. Well, we were hauling other birds at that time besides these particular ones, so I don't know where they went.

Q. You don't know where they went?

A. I know they were sold.

Q. Did you receive the money that they were sold for?

A. No, sir.

Q. Who did?

A. I think Mr. Couch, John, collected all the money.

Q. Was it put in this bank account?

A. I don't know whether it was or not.

The Court: May I ask a question?

Mr. Maury: Surely.

The Court: You took the turkeys down and sold them. When you delivered the turkeys——

The Witness: I think one time I went along.

The Court: When you delivered the turkeys, what did the [26] buyer give you? Didn't he give you a check or cash or money for them?

The Witness: Not to me, no, sir. I think one time I was paid for a loan.

The Court: Did Couch go along with you when you took the turkeys down to sell?

The Witness: I didn't go up there. I would

(Testimony of Charles Geers.)

load and he would go with the truck or send this Mexican boy.

The Court: Only one time you went?

The Witness: I think only once.

The Court: What happened when you went there the one time?

The Witness: I didn't collect the money.

The Court: Who did?

The Witness: Couch would drop by later and pick it up.

The Court: You mean to say you just delivered the turkeys and then left?

The Witness: Yes.

Mr. Maury: May the record show counsel for the defendants McKibben, Carter and Lewis has handed me a Downey Rabbit & Poultry Company check, No. 26097.

Mr. Nimocks: Carter and McKibben only.

Mr. Maury: Yes. Which is dated August 8, 1952.

Q. I will show you the back of it, Mr. Geers. Is that your signature on the back of it? [27]

A. Yes, that is.

Mr. Maury: I offer this in evidence, your Honor.

The Court: It may be received in evidence as Plaintiff's Exhibit 6.

The Clerk: Plaintiff's Exhibit 6 in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 6.)

The Witness: Could I look at that again, please?

(Testimony of Charles Geers.)

Q. Surely. Plaintiff's Exhibit 6. You may look at it. Did you receive that check from the Downey Rabbit & Poultry Company on August 8, 1952, the date which it bears? A. Did I what?

Q. Did you receive that?

A. I evidently did. I endorsed it. I don't remember whether I put it in the bank or not. I see that it went in.

Q. Who did you and Couch usually sell the birds to?

A. We sold some to Orville, we sold some to Mack, and some to——

Q. Who is Orville? A. Orville Lewis.

Q. And who is Mack?

A. McKibben. May I ask one of them something? I don't recall the name of the other. What is the other company downtown——

Q. There were only three processors you sold poultry to? [28]

A. That was the main three we sold to, yes, sir. There were a couple of others. Beech.

Mr. Maury: You may cross examine, counsel, or examine, I should say, because I have been cross examining the defendant.

The Court: You don't remember what you did with this check, Plaintiff's Exhibit 6, after you got it? It is made out to you.

The Witness: It is endorsed, your Honor. There is no second endorsement, so it must have been deposited.

The Court: You didn't cash it?

(Testimony of Charles Geers.)

The Witness: No, I did not.

The Court: If it was deposited——

The Witness: It was deposited.

The Court: Who deposited it, do you know?

The Witness: Either Couch or myself.

The Court: Did you go in the bank and make the deposit?

The Witness: I might have in that case. It wasn't common practice for me to.

The Court: All right.

The Witness: In most cases I did not know the prices John was getting for the stuff.

The Court: All right. [29]

Cross Examination

Q. (By Mr. Nimocks): Mr. Geers, were you a licensed dealer under the Agricultural Code of the State of California at that time?

A. They decided in Riverside we weren't.

Q. What about Mr. Couch?

A. They decided he wasn't, either.

Q. On these deposits in the bank accounts, did you make deposits as well as Mr. Couch?

A. Oh, about, I would say possibly three occasions or maybe four in all the time that we were together.

Q. You were buying poultry from other growers at that time, were you not? A. Yes.

Q. I think you stated in previous testimony you thought there was one check that cleared, is that not correct? A. Yes, sir.

(Testimony of Charles Geers.)

Q. I hand you a check dated August 7, 1952, on the Norwalk branch, Bank of America, made out to C. W. Ohlson and Quaker Oats, and ask you if that is your signature. A. Yes, sir.

Q. That check was paid by the Bank of America on what date? A. 8/19/52.

Q. That bears the endorsement of Quaker Oats as well as [30] C. W. Ohlson? A. Yes.

Q. What was that?

A. C. W. Ohlson, pay to the Bank of America. That was for turkeys.

Q. Any other kind of poultry?

A. No. We never bought anything else.

Mr. Nimocks: May this be offered as Defendants' Exhibit first in order?

The Court: It may be received.

The Clerk: Defendants McKibben, Carter and Lewis Exhibit A in evidence.

(The document referred to was received in evidence and marked as Defendants' Exhibit A.)

Q. (By Mr. Nimocks): Now, Mr. Geers, did you buy other kinds of poultry besides turkeys?

A. Yes, sir.

Q. Did you buy from other growers than Ohlson and McVicker? A. Yes.

Q. Did you have occasion to make out checks payable to the growers and other milling companies or feed companies? A. Yes, sir.

Q. Among them were whom, do you recall?

A. I think that check I gave them for com-

(Testimony of Charles Geers.)

parison of signatures [31] there, I think that you will find that check was a joint one.

The Court: Exhibit 4-A?

The Clerk: 4-A, yes, sir.

Q. (By Mr. Nimocks): Check of John Couch. Who is on that?

A. A. Graves and Albers Milling Company.

Q. No. It says Purina.

A. Well, Purina, one of them. Here is another one, A. Graves and Ralston-Purina Company.

Q. Was that a common practice in the trade, Mr. Geers, to your knowledge?

Mr. Maury: To which we object. The witness has testified he was a brand newcomer in the trade.

The Court: When did you first start in this poultry racket?

The Witness: You put it very aptly. If you have a copy of the answer there, the dates were fresher. I had an attorney refresh my memory.

The Court: Don't you remember?

The Witness: It was in March or April 1952, I think.

The Court: March or April 1952?

The Witness: Yes, sir.

The Court: Then you went out buying poultry and rabbits and turkeys, is that right?

The Witness: Just poultry and turkeys. [32]

The Court: How much time did you give to the buying of poultry and turkeys?

The Witness: Well, we worked about day and night, I guess.

(Testimony of Charles Geers.)

The Court: Constantly from April to August?

The Witness: We worked pretty hard, yes, sir.

The Court: How many loads would you buy in the course of a week?

The Witness: It all depended. We had a poultry market, too, where we were selling dressed poultry to the retailers.

The Court: You said you drove a truck and went out and made the purchases with the truck?

The Witness: We did.

The Court: How many times a week did you go out?

The Witness: Sometimes you would go three and sometimes you would go once. Sometimes you would go every night for three or four nights in a row.

The Court: You did that constantly from April or May until August?

The Witness: Yes, sir.

The Court: How many growers did you contact during that period?

The Witness: Deal with?

The Court: Yes, deal with.

The Witness: We had this Mr. Graves up at Lancaster we [33] dealt with. We had two or three smaller growers we bought chickens from quite regularly. We bought turkeys from a fellow by the name of Smith—I would say probably we bought from 15 to 20 people.

The Court: Did you have any other people in

(Testimony of Charles Geers.)

the Perris Valley other than the parties represented on these checks?

The Witness: Yes. We bought from a man by the name of Smith.

The Court: Would you keep your voice up? This is not a private conversation.

The Witness: We bought from a man by the name of Smith.

The Court: In all these transactions, did you pay for any of the poultry or the turkeys in any way except by check?

The Witness: No, sir.

The Court: Never paid cash?

The Witness: No, sir.

The Court: Always gave checks?

The Witness: Yes, sir.

The Court: Did you give checks at any time to anybody other than the grower?

The Witness: Yes, sir. I have one right here.

The Court: The grower and who?

The Witness: Ralston-Purina Company. If I had one of our old blank checks, I mean the cancelled checks, I think in most all cases where there was a lien on the poultry, we did that. [34] I did not know it was for that purpose.

The Court: How did you know there was a lien on the poultry?

The Witness: Most of the growers would tell you.

The Court: Did they tell you to make the check to themselves and the feed company?

(Testimony of Charles Geers.)

The Witness: Yes, sir.

The Court: What was the question now?

Mr. Nimocks: I think he has answered it now on the basis of the court's examination. You brought out the information I wanted.

Q. On approximately how many occasions per week or per month did you take this poultry or turkeys to market, Mr. Geers?

The Court: Just a minute. This witness testified he didn't deliver the poultry or turkeys. Did you say to the market?

Q. (By Mr. Nimocks): Deliver to the buyer, the buyer from you.

The Court: This witness said he didn't do it, that Couch made the deliveries.

The Witness: I think only once during this particular time, your Honor.

The Court: You mean during August? [35]

The Witness: I think only once during this McVicker deal. I misunderstood that part of it. I took poultry more than one time.

Q. (By Mr. Nimocks): Who did the bulk of the hauling of the poultry to the market?

A. I would say it was about evenly split up. In most cases, we went together.

Q. As far as these transactions are concerned here, you had only one time in which you were present at the delivery?

A. I think that is correct, yes.

Q. How were these funds handled? Who handled them so far as putting them in the bank or

(Testimony of Charles Geers.)

whatever disposition was made of the funds you received?

A. I know where that one went you have in evidence. It went in the bank.

Q. That was the same bank account on which the checks were that you drew? A. Yes.

The Court: May I ask another question?

Mr. Nimocks: Certainly.

The Court: You testified a little while ago about making deliveries and collecting the money.

The Witness: Yes, sir.

The Court: Did you mean that you were restricted to this period around August, or was that during the entire period? [36]

The Witness: I don't suppose I collected in all the time we were together over four times or five.

The Court: The money you collected, what did you do with it?

The Witness: I deposited it in the bank.

The Court: Other than these four or five times?

The Witness: There is one instance when I didn't deposit a check. The check was in the amount of \$400. I believe it was from Mr. McKibben. The reason for that was I have a friend in the Citizens Bank at Riverside, and John wrote me a check for \$400. I took the check in, and even though I didn't have an account there, this fellow is assistant cashier in the bank, so he put an O.K. on it, and I went over to the teller and he O.K.'d and he gave me the cash, and some time later he called me up, and it bounced high as a kite, and I had

(Testimony of Charles Geers.)

to scrape up \$400 to make it good. I think Mack owed us some money, and I came down and his girl wrote a check for \$400, and I think you will find that during the period there.

Q. (By Mr. Nimocks): You have stated, I think, Mr. Geers, you made sales to the Downey Rabbit and Poultry Company and to Orville Lewis and Steinman—— A. Steinberg.

Q. There were a couple of others, you said?

A. One time, I don't recall what, we sold them, John [37] had a friend down at the beach that owns, I think the name is Manor Poultry.

Q. Where is the beach?

A. I don't know where it is. Oh, yes, Redondo Beach.

Q. Did you ever make any sales to Simmons?

A. Yes.

Q. Where was he located?

A. He is over by Arcadia-Monrovia section.

Q. Did you ever make any other sales in Los Angeles County?

A. Not that I recall, no.

Q. Did you ever make any sales in Riverside County?

A. Not except through our retail store that I know of.

Q. Any other place outside of Riverside or Los Angeles County?

A. John used to haul some poultry to San Diego or Tijuana. What he did with that, I don't know.

(Testimony of Charles Geers.)

Q. Do you recall whether it was to more than one retailer or processor down there?

A. No, I don't.

Q. In other words, then, is that about five or six sources you have sold, is that correct?

A. Yes.

Mr. Nimocks: I think I have nothing further, counsel. [38]

Redirect Examination

Q. (By Mr. Maury): I would like to have you explain to the Court what records of purchases, growers you kept at that time.

A. He kept them in a regular, I think standardized form most all truckers used.

Q. What was on them?

A. It showed the amounts and the weights, who they were purchased from.

Q. What records were kept when they were sold?

A. He handled every bit of it. The ones I have delivered, I didn't and never collected a penny or anything else. Some of them, they evidently grade them and from the total poundage you didn't get paid as much money for them as you did some of the others. John would just say, "Take them in and drop them off. I will go in and settle with them." I don't know what records he kept.

The Court: May I ask another question? Who kept the books and records?

The Witness: He did.

(Testimony of Charles Geers.)

The Court: Did you have anything to do with them at all?

The Witness: No, sir.

Q. (By Mr. Maury): Calling your attention now to the Plaintiff's Exhibit 3 in evidence, dated August 8, 1952, and [39] the Plaintiff's Exhibit 6 in evidence, dated August 8, 1952, looking at those two, can you remember whether or not Plaintiff's Exhibit No. 3, which you gave to McVicker, pertained to the same turkeys that Plaintiff's Exhibit No. 6 pertained to that you sold to Downey Rabbit and Poultry Company?

A. Well, according to the date on the two checks, it would appear that they did.

Q. I am sorry, I can't hear.

A. I say due to the dates on the checks, it appears that they did.

Q. What is your recollection, sir? Isn't it true you bought turkeys from Ohlson for the first check and sold them to Downey Rabbit and Poultry Supply and received the second check the same day?

A. Yes; apparently.

Q. The same turkeys? A. Yes.

Q. What is that?

A. Yes. That is apparent to me by looking at these. I have no recollection of that.

Q. You do recollect taking a set of turkeys to Downey Rabbit and Poultry Company, Downey?

A. This check could have been issued for something they bought a week before that. I don't know.

(Testimony of Charles Geers.)

Mr. Maury: Will your Honor instruct the witness to answer the question?

The Court: Answer the question if you can. If you don't remember, you can say, "I don't remember," or if you want to, you can answer the question and explain the answer.

The Witness: That is what I am trying to do.

The Court: What is the question?

Q. (By Mr. Maury): Do you remember taking one load of turkeys to the Downey Poultry and Rabbit Company?

A. On August 8, I don't remember.

Q. On or about?

A. On or about, yes.

Q. On or about August 8?

A. Yes, I evidently did.

Q. From these two checks, you assume that this is the load you took, is that right?

A. That is what I assume, yes.

Q. But you have no independent recollection of that particular load?

A. Yes, that's right.

Q. Did you ever take another load of turkeys to Downey Rabbit and Poultry Company?

A. I don't recall whether I did or not.

Q. Did you ever take a load of turkeys to Thrifty Poultry Company? [41]

A. I don't remember exactly whether I did or John.

Q. Were you with him at the time?

A. I have been with him when we unloaded

(Testimony of Charles Geers.)

turkeys, maybe not a whole load, but a partial load.

Q. Was it about this same time in August, 1952 that you took a load or a partial load to the place of the fellow you call Orville?

A. I imagine. I don't know how many we brought there.

Q. Whose place is Orville's? A. Thrifty.

Q. And that is Downey Rabbit and Poultry Company? A. Yes.

Q. Who have you talked to about this case since you were first served with process besides your lawyer? A. Who have I talked to?

Q. Yes. A. I don't know.

Q. Have you talked to Mr. Lewis?

A. I have seen Mr. Lewis about twice, I think. I saw him at John's funeral and I saw him once at John's house the night after he passed away. I saw him here in the hallway, I believe, the last time we were up, and this morning. I have seen him about four times.

Q. Have you seen Mr. McKibben?

A. I think I have seen Mac once since then.

Q. Mr. Carter? A. Mr. Carter?

Q. Mr. McKibben's partner.

A. I wouldn't know him.

Q. Have you talked about this case with Mr. Nimocks? A. No.

Q. You have not? A. With whom?

Q. The attorney for these two? A. No.

Q. You have not? A. No.

(Testimony of Charles Geers.)

Q. As to the Ohlson turkeys, which transactions are evidenced by Plaintiff's Exhibit No. 1 for \$600, as to that Exhibit No. 1, I want to get it absolutely clear if you have any recollection of that transaction at all.

A. This particular check here?

Q. That's right.

A. Yes, I do.

Q. Have you told us everything about that transaction that you know?

A. I believe John filled in the amount and the date, who it is to, and I wrote the check, and it is quite evident I didn't fill in the amount.

Q. Were you present at the time the check was handed [43] to Mr. Ohlson?

A. No, I was not. I was present at the time we loaded the turkeys and then I left.

Q. Where did those turkeys go, if you know?

A. I don't know.

Q. Where did you take them? You were present.

A. I had another truck.

Q. You had another truck?

A. Yes. From the grower's place I had to go to the scale. I remember him saying he needed some money and to deduct it off the weight of the turkeys and give him that much money.

Mr. Nimocks: I'm sorry. I couldn't hear.

The Witness: He said he needed some extra money and he didn't know he was going to come out and settle with Quaker Oats, so to give him that much extra.

Q. (By Mr. Maury): The grower told you to make this check out?

(Testimony of Charles Geers.)

A. Make another check for \$600, he said.

Q. Without Quaker Oats name on it?

A. He said make it for that amount.

Q. Was that at the request of the grower?

A. I have no idea of the conversation after I left. John said he wanted another check.

Q. You gave him the other check? [44]

A. Yes.

The Court: Mr. Maury, it is after 11:00 o'clock and we usually take a recess at this time.

Mr. Maury: Surely.

The Court: While you are thinking up your next question, we will take our morning recess. We will now recess until twenty minutes after 11:00.

(Morning recess.)

The Court: Do you have any other questions?

Mr. Maury: I just wanted to get one thing straight.

Q. You did take one load of turkeys to the Thrifty Poultry, is that right, that is, at or about this month of August, 1952?

A. I think we might have taken a partial load. I don't remember. I think we did, though.

Q. Any more than that?

A. No, sir, I don't think so. I know one of those loads we sold in two different places. I don't remember where the second place was, but we sold one load to them or a part of a load.

Q. That was from the turkeys you got from the Ohlson place or McVicker?

(Testimony of Charles Geers.)

A. I think so, yes.

Mr. Maury: That's all.

Mr. Nimocks: I have just a few questions, your Honor. [45]

Recross Examination

Q. (By Mr. Nimocks): Referring to Exhibits 3 and 6——

May I find out just which ones these are?

The Clerk: 3 is dated August 8. 6 is dated August 8.

Q. (By Mr. Nimocks): Referring, also, to Defendants' Exhibit A, the check which you gave to Ohlson and Quaker Oats in the amount of \$2,611.25, dated August 7, is it possible, Mr. Geers, some of that poultry or turkeys were delivered to Downey Rabbit and Poultry on that day or the next day, the 8th? A. It is possible, yes.

Q. The check I am referring to is the one which cleared in the amount of \$2,611. Did you ever break up these loads in any way before you delivered them?

A. Yes, sometimes we did. Sometimes we kept some out for our retail store.

Q. When you say you kept them out, where did you store them or where did you have them at that time?

A. Down at a place out there. He had hold in pens for several thousand birds, not turkeys, but I mean several thousand chickens or several hundred turkeys at his home.

(Testimony of Charles Geers.)

Q. Did you ever take some of these and keep them in there?

A. We used to go by and put off twenty-five or thirty [46] or something. We had some freezers and also a refrigerator box in the store. We would go by and drop them off, or if we had too many on hand, we would load some onto another load.

Q. Is it possible some of the loads you delivered in Los Angeles County were comprised partly of turkeys in that pen or other poultry?

A. Oh, yes.

Q. How often would that occur, Mr. Geers?

A. I couldn't say, one, two, three, four times, but I mean it was a fairly common occurrence.

Q. Was it your practice to keep some of the farmers' turkeys or other kind of stock in these pens all the time?

A. Yes, some fryers, turkeys and hens.

Q. And then you would use them to fill out a load?

A. Yes, if we had a short load.

Q. Did you buy any B turkeys?

A. Well, that is the part I didn't understand about the business. That is the reason John would usually square up with people that were buying them, because I didn't understand the grading of them, and the times I did go, in most every case except, I think, this once or twice, possibly one time I went to Florence Poultry, I believe I went down there one time by myself, that is the reason I think he had the deal all arranged before he would go in with them, I mean the fellow he was taking them

(Testimony of Charles Geers.)

to knew they were on their [47] way and depended on them.

Q. Within a week or two weeks prior to this first purchase from Ohlson, did you purchase turkeys or other kind of poultry from any other grower in that area?

A. Well, I don't remember.

Q. What about during the time covering the purchase from Ohlson and McVicker?

A. During the time we were buying from them, did we buy any other in that area?

Q. Yes, did you buy any turkeys anywhere that you resold in that area other than these?

A. Let me think. I don't recall.

Mr. Nimocks: I believe that's all, your Honor.

The Court: May I ask a question? This Exhibit A, which is a check dated August 7, 1952, made payable to C. W. Ohlson and Quaker Oats Company, was this the first check that you gave to Mr. Ohlson, do you remember?

The Witness: No, sir, I don't remember whether it was the first one or not.

The Court: This is August 7th. Did you buy anything from Mr. Ohlson before August 7th?

The Witness: I tell you, I would never have got hold of that check if it hadn't been for——

The Court: But I am not interested in that. I am asking you your remembrance, whether or not before August [48] 7th you bought anything from Mr. Ohlson.

(Testimony of Charles Geers.)

The Witness: I couldn't say yes or no honestly to that question.

The Court: You don't remember?

The Witness: No, sir.

The Court: All right.

Redirect Examination

Q. (By Mr. Maury): When you would take on a few turkeys from Couch's pen, twenty-five or thirty would be the maximum in any of these deals?

A. We would in most cases fill out a load.

Q. How many in a load?

A. I don't recall how many the truck would handle.

Q. In the hundreds, thousands, or how?

A. Hundreds.

Q. Then to fill out a load, it would be twenty-five?

A. Yes, sometimes, if he had what he figured would be a different grade of turkey or something, one that wasn't quite up to par or one that was exceptionally good, many times he would keep a few of the holes open in the truck and put these birds in separate.

Q. But the process was that you would get a load at the grower's, is that right? [49]

A. Yes.

Q. And then come back and pick up a few?

A. Yes.

Q. And then go on to Los Angeles and sell them?

A. Yes.

(Testimony of Charles Geers.)

Q. Is that what happened with reference to the transactions as to each of these checks in evidence?

A. I wouldn't say that, no.

Q. About how many times were loads filled out or a few dropped off?

A. At that time there wasn't too much of a market for turkeys, I don't think, during that time of the year. We would have people call in to the store. We had an ad in the paper that we bought poultry and you would have people call and they had five turkeys to sell or one turkey to sell, and they would bring them down, and we didn't have a place to keep them, and we would take them to John's home, he had an acreage there, and keep them until we needed some to fill a load.

Q. But seldom more than thirty or forty?

A. That's about right.

Q. So consequently it would be a very minor fraction of the load that you took to Los Angeles either way.

A. I would say probably our truck, I don't know, would haul maybe three or four hundred.

Q. And if you put thirty or forty with them, that would be——

A. Ten or fifteen per cent.

Q. The rest of them would be the ones you got at the grower?

A. Yes.

Q. And took right on into Los Angeles?

A. Yes.

Q. Or sold to Thrifty at Downey?

A. Yes, and others.

(Testimony of Charles Geers.)

Q. And others, yes. Of the turkeys that you bought from Ohlson, how many of them did you sell to others than Thrifty or Downey?

A. We sold one load there and I don't know whether they went to Simmons or to Steinberg, to Florence Poultry.

Q. That is of the Ohlson birds?

A. I think maybe—well, of the two there. We were buying most of those right there in a relatively short period of time. I just couldn't honestly say whether any of them went to someone else or whether one load or two loads did.

Q. You couldn't honestly say? A. No.

Q. You have no recollection?

A. No, sir. [51]

Q. Isn't it true almost all of these birds went to Downey and this one fraction of a load went to Thrifty?

A. I know the one load that I evidently hauled, according to that check, went to Downey Poultry. I don't remember whether—

Q. You have already testified about this fractional load that went to Thrifty.

A. I know we took one load that had, I believe they were hen turkeys, and I don't know whether there were some chickens in the load or not.

Mr. Maury: That's all.

The Court: You may step down.

Mr. Maury: May this witness be excused. As I say, your Honor, he is also a defendant.

(Testimony of Charles Geers.)

The Witness: Your Honor, may I ask something?

The Court: Yes.

The Witness: I just went to work on a new job the first of the month and I wondered if I could be excused from coming back. This thing will evidently go into the second day.

The Court: You are a defendant in this case.

The Witness: If it goes into the second day, do I have to come back tomorrow?

The Court: I don't presume you have to be here at all. You didn't have to answer.

Mr. Maury: He was subpoenaed, your Honor.

The Court: However, it is up to you.

The Witness: I would sure like that. I mean I had a heck of a time getting away today.

Mr. Nimocks: I would prefer if he would stay the rest of the day.

The Witness: Well, the rest of the day is all right.

The Court: You make your request tonight.

The Witness: O.K.

(Witness excused.)

Mr. Maury: I will call the representative from the Bank of America.

WILLIAM LISKEY

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: William Liskey.

The Clerk: How do you spell your last name?

The Witness: L-i-s-k-e-y.

Direct Examination

Q. (By Mr. Maury): What is your occupation?

A. Assistant Operations Officer, Bank of America, Norwalk Branch. [53]

Q. As such, do you have under your supervision and control the records of accounts of depositors of that bank? A. Yes, I do.

Q. Calling your attention to an account which is listed in the name of Charley Geers or John Couch, do you have the records of that account with you for the month of July and August, 1952?

A. Yes, I do.

Q. May I see them? A. Yes.

Q. Will you first explain to the Court what they are composed of and what each document is?

A. We have the records of checks and deposits with the balances for that period.

Q. That is the usual bank statement?

A. Yes, it is. This is a certified copy.

Q. How many sheets are there and for what months?

(Testimony of William Liskey.)

A. This covers from July through January 1, 1953, July 2nd of 1952 through January 1, 1953.

Q. You said they are certified copies. By that what do you mean? The originals are maintained in the office of the bank?

A. Well, the carbons of originals are maintained in the bank and these are copies, two copies of those.

Q. They are made for the purpose of bringing to court? A. That's right. [54]

Q. To your knowledge, are they true and correct copies of the originals?

A. Yes. However, I did not make these up, but I did check them.

Mr. Maury: Your Honor is familiar with the rule that national banks must keep their records intact. Do you object, counsel?

Mr. Nimocks: I have no objection.

The Court: Do you have any records showing how the account was opened?

The Witness: Well, I have the original signature card John Couch used to open his individual account, and I also have this temporary card that was used to close that out and open it in a joint tenancy for Charles Geers and John Couch, but the original signature card, they told me one of the courts has, I don't know which one. It was used in the other action two years ago. I am not familiar with that particular court action.

Mr. Maury: If your Honor please, may these be stapled together and marked as one exhibit?

(Testimony of William Liskey.)

The Court: Yes. They may be marked Plaintiff's Exhibit 7.

Mr. Maury: They are offered in evidence.

The Court: They may be received.

The Clerk: Plaintiff's Exhibit 7. [55]

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 7.)

Q. (By Mr. Maury): Do you have a signature card pertaining to the account?

A. This is the original signature card.

Mr. Maury: With reference to the original, may it be stipulated that the same may be photostated and the photostat——

Mr. Nimocks: It may be so stipulated.

The Court: Then it may be substituted. Such may be the stipulation.

Mr. Maury: May this be marked?

The Court: It may be marked Plaintiff's Exhibit 8 for identification.

The Clerk: 8 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 8 for identification.)

Q. (By Mr. Maury): Are these the signature cards of the bank containing the exemplars of signatures of John Couch and Charley Geers?

A. Yes.

Mr. Maury: We offer these in evidence, your Honor.

The Court: They may be received in evidence.

The Clerk: Plaintiff's Exhibit 8.

(Testimony of William Liskey.)

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 8.) [56]

Q. (By Mr. Maury): Does the bank keep a record of checks that are presented and drawn on its depositors which are dishonored?

A. Yes, they do.

Q. Do you have such a record of checks presented to this account which were dishonored by the bank?

A. Yes, I do, from August 5 through September 2.

Mr. Maury: May I have this document marked for identification, your Honor?

The Court: It may be marked Plaintiff's Exhibit No. 9 for identification.

The Clerk: 9 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 9 for identification.)

Q. (By Mr. Maury): Is that a record that was regularly kept by the bank?

A. This is my copy, because there are about a dozen or more copies that this came from. There are two or three sheets each day that each bookkeeper has and we have six bookkeepers, so there is quite a stack of documents.

Q. Did you personally make that up from the records of the bank?

A. Yes, I did make this myself. I went from the beginning of August to the end of September.

Q. What does the first column indicate? [57]

(Testimony of William Liskey.)

A. This is the reason for returning checks. They are all returned for not sufficient funds.

Q. The second column?

A. That indicates the maker of the check.

Q. And the third column is the amount?

A. The third column is the amount, and this is disposition, in other words, where the check has been returned to, the last branch that handled the check.

Q. That is what is known as the call number of the bank?

A. This is the A.B.A. number here, but these others are the interior numbers of our branches. These are the dates the checks were received and returned.

Q. That is, dishonored? A. That's right.

Mr. Maury: We offer this in evidence, your Honor.

Q. One thing further. Does this pertain to the account of Charles Geers and John Couch you have just identified by the other documents?

A. Yes.

The Court: It may be received.

The Clerk: Exhibit 9.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 9.)

Q. (By Mr. Maury): During the course of your work, Mr. Liskey, is it necessary for you to be familiar with the [58] various characteristics of the handwriting of the signers of various checks?

(Testimony of William Liskey.)

A. Yes, it is.

Q. How long have you been in that work?

A. Well, I have been with the bank for six and a half years.

Q. During the course of that period of time have you had to study the various characteristics of handwritings?

A. No, I have never had to study characteristics of handwriting.

Q. Have you noticed that in the course of your work? A. I have.

Q. You have familiarized yourself through your work, rather than through study?

A. That's right.

Q. Calling your attention to Plaintiff's Exhibits 4 and 4-A for identification, both of which are checks apparently drawn on your branch of the Bank of America, one of which is signed by John H. Couch and the other bears the name Charles Geers upon the signature line, can you examine those two handwritings and give us any opinion whatsoever as to whether there is any similarity between the two?

A. I would say that the C in Couch is similar to the C in Charley, and the H that is used both for John and Couch is similar to that used in Charley Geers. That is the only [59] similarity I see, except that they both slant the handwriting the same way.

Q. Would you have any opinion as to whether they were both written by the same hand or not?

(Testimony of William Liskey.)

A. Well, that isn't very much to go on. Well, I wouldn't care to say, to tell the truth. I don't know. If there were more letters, letters that you could compare, I might say one way or the other.

Mr. Maury: I think you may cross examine.

Mr. Nimocks: I have no questions.

Mr. Maury: May this witness be excused?

The Court: Before this witness is excused, I would like to call counsel's attention to something that appears in Exhibit 7. It appears that John Couch carried this account in his own name down to August 3.

Mr. Maury: Yes, sir.

The Court: That Geers had nothing to do with this account at all as far as the John Couch account is concerned.

Also, it appears that although this signature card is dated on July 2, 1952, nevertheless the balance of the John Couch account of \$498.92 was not transferred to the Couch and Geers account until August 3, 1952. The only money in that account is the money that was left in the Couch account, \$498.92. There isn't a deposit by anybody in the John Couch and Charles Geers account, not a deposit. The only thing we [60] have got here are certain checks that were paid out of the balance of the \$498.92. Before you let the witness go, you may want to try to change the record in some way, to explain the record.

Mr. Maury: I don't think we have any explanation to worry about. Perhaps counsel for the de-

(Testimony of William Liskey.)

fense might, but inasmuch as all these checks were presented after the 3rd of August, according to the testimony of the witness Charles Geers——

The Court: That's right. Geers signed the checks after the 3rd of August, evidently assuming there would be enough money in the bank to pay for them.

Mr. Maury: I don't know whether he assumed that or not, but at any rate they were all returned NSF.

The Court: All right. I notice on your Exhibit 9, which is the rejected check record, that Couch continued to draw on this account, although he knew that the balance that was transferred was all that was there, he knew there were no deposits made in the account, but nevertheless he continued to draw on the account down to 9-2-52. So on 8-7-52, he drew a check for \$642, which was more than enough to take care of the balance if no other check had been taken out of it. I am just calling your attention to that now while the witness is here.

Mr. Maury: What was that last, your Honor?

The Court: 8-7-52, John Couch drew a check for \$642. I guess maybe that is the date it was turned down, 8-7-52.

Mr. Maury: Yes, I think so.

The Court: Then on 8-7-52, John Couch drew another check for \$1,503.36. I have no other questions of the witness.

Mr. Geers: May I ask the witness a question?

The Court: Yes.

(Testimony of William Liskey.)

Cross Examination

Q. (By Mr. Geers): Mentioning the account of Charles Geers and John Couch, wouldn't it be customary, if it was a joint account, to mail a statement in both names?

A. Yes. However, it has been the feeling of our bookkeepers in the past not to transfer a new name.

Q. I have got our old balance sheet which I helped to find.

The Court: Show it to counsel and let him look at it. If it throws any light on the situation at all, we will admit it in evidence.

Mr. Geers: I found that about two months after all this came out.

The Court: Is that a statement from your bank?

The Witness: Yes, it is. [62]

The Court: Can you tell us when that was mailed out by the bank?

The Witness: Oh, some time after August 30.

The Court: After August 30?

The Witness: Yes. We close off August 30, and so that would have been the first few days of September. I wouldn't know the exact date.

The Court: Do you want that admitted in evidence?

Mr. Geers: I think it should be.

The Court: It will be received as Defendant Geers' Exhibit A in evidence.

The Clerk: Defendant Geers' Exhibit A.

(Testimony of William Liskey.)

(The document referred to was received in evidence and marked as Defendant Geers' Exhibit A.)

Q. (By Mr. Geers): Calling your attention to what is the Defendant's Exhibit A, which is a check on your branch of the Bank of America signed by Charles Geers and apparently bearing cancellation stamp of the bank on the 19th of August, 1952, can you tie that into the account of Geers or Couch?

The Court: That had to be paid out of the Couch account.

The Witness: Yes. It was paid August 19th.

The Court: Paid out of what account?

The Witness: May I see the signature card, please? Out of the joint account of John Couch and Charley Geers.

Q. (By Mr. Geers): Calling your attention to Plaintiff's [63] Exhibit 9 in evidence, I note that some of these checks which were returned are during the month of August, in fact, all but the last two. The last two, during the month of August, and according to the bank statement, which is the third page of Exhibit 7, the last column, new balance shows in many instances between August 1 and August, during the early part of August, certain deposits and a high balance on or about August 1. Were all of these checks presented to the bank after the withdrawals indicated here, on or about August 14, 15, 16, 19 and so forth? That is to say,

(Testimony of William Liskey.)

if the dishonored checks were presented when there was this balance, can you give the reason for it?

A. Well, there seems to be three checks here that were returned on the 11th, 12th and 13th, and at that time there seems to be sufficient funds in the bank. There is, in fact. The only explanation I could give is that we had a hold on the account for these deposits, for uncollected funds until our branch collected the funds that those checks that were deposited represented.

The Court: You mean to say you would turn down a check and mark it not sufficient funds, turn it back as a no account check, when your records showed you accepted a deposit in the bank?

The Witness: Very definitely, if we choose to hold the funds until they are cleared. [64]

The Court: Suppose after you turned back the check your deposits cleared and the money was there?

The Witness: Then the payee of the check will have to reclear the check.

The Court: Suppose he reclears it a second time and there is no money there?

The Witness: I am afraid he will have to go after the maker and get the money.

The Court: He might go after the bank.

The Witness: I don't think so.

The Court: Now, I want to ask this witness a question. There is something very interesting here. I don't understand it. Was there more than one John H. Couch account at your bank?

(Testimony of William Liskey.)

The Witness: Not at the same time.

The Court: Not at the same time. The John H. Couch account was transferred into a joint account on——

Mr. Maury: August 3, wasn't it?

The Court: What date did he say it was transferred to a joint account?

The Witness: I think it was July 4, wasn't it?

The Court: Well, I don't know. We have got here this date. It is dated July 2. Was it transferred to a joint account then?

The Witness: Yes. [65]

The Court: Then on July 2 the John Couch account was merged into the Couch and Geers account, is that right?

The Witness: That is correct.

The Court: Well, now, I call your attention to Defendant Geer's Exhibit A. It shows that there was a balance on August 16 of \$3,700 plus. If there was a balance on August 16 of \$3,700, why weren't these checks paid that were presented?

The Witness: I presume that the teller that took the deposit put a hold on the account for a certain number of days until the checks that were deposited were cleared by the banks that they were drawn on.

The Court: Let me see all the checks, please. Now, isn't it a fact when Mr. Geers drew this check, Exhibit A, for \$600 payable to C. W. Ohlson, at that date, on August 13, there was \$600 in the bank to cover that check? Do you want to look at that from your own records?

(Testimony of William Liskey.)

The Witness: Yes, there was.

The Court: Now, isn't it a fact that as far as Exhibit 2 is concerned, when the Defendant Geers made a check dated 8-13 to C. W. Ohlson and Quaker Oats Company for \$2,715.75, there was sufficient money in the bank to cover that check?

The Witness: Yes, I believe there was, if I remember seeing it on that statement.

The Court: Isn't it true that as far as Exhibit 3 is [66] concerned, when Defendant Geers made the check dated August 8 to H. M. McVicker and Quaker Oats Company on August 8, there was sufficient money in the bank at that time to pay the check?

The Witness: Yes.

The Court: Isn't it true when Defendant Geers made Exhibit 5, check dated August 12, 1952, payable to Harry M. McVicker and Quaker Oats Company for \$1,490.60 on August 12, there was sufficient money in the bank to pay that check?

The Witness: Yes.

The Court: The only explanation you can offer as to why the checks weren't cleared is because possibly the bank might have been holding up credits on certain deposits until the deposits cleared?

The Witness: I say possibly, because naturally I have no firsthand knowledge of it, but I am sure with that type of account with so many checks going back, that they would hold the funds as uncollected funds. The funds were on deposit, but

(Testimony of William Liskey.)

they were not available. All items deposited are subject to payment.

The Court: Although this new account was supposed to have been opened on August 2 of Geers and Couch, a joint account, nevertheless Mr. Couch makes a deposit of \$2,611.75 on August 19, and that is not put in the joint account at all, it is put in a separate account, isn't that correct?

The Witness: No, I believe that is the joint account. [67]

The Court: It doesn't show it.

The Witness: No, it doesn't. He made a true copy of it. On the other copy, they didn't have Geers' name as they should.

The Court: Listen, you bring in the records and you say they are true copies. I don't know.

The Witness: Well, they made a true copy, that is what the Court wanted.

Mr. Geers: Exhibit 7 shows exactly the same. One of the pages is a carbon of that original, your Honor.

The Witness: I see your point. We have that trouble every now and then, that the bookkeeper does not put a new name on the account as she should.

The Court: Mr. Maury, let me ask you a question.

Mr. Maury: I am not a witness, but I will try to answer.

The Court: Assuming, without agreeing, that Geers went out and bought these turkeys knowing

(Testimony of William Liskey.)

that the Quaker Oats Company had a lien on them, and he gave the check payable to the seller and the Quaker Oats Company, and assume at the time the check was given and received, there was sufficient money in the bank to take care of it.

Mr. Maury: It doesn't mean a thing unless the money is there when the check gets there.

The Court: The money is there, but it was turned down by the bank. [68]

Mr. Maury: There has got to be money.

The Court: Where is the conversion?

Mr. Maury: The conversion is in the taking of the turkeys without the checks being cleared and in the slaughtering by the processors without paying Quaker Oats.

The Court: He gave a check which was perfectly good.

Mr. Maury: The processor gave nothing to Quaker Oats at all.

The Court: The checks were good at the time they were given. Not only that, they were good down to August 19.

Mr. Maury: I disagree with your Honor. They were not good unless they were backed up by cash in the bank.

The Witness: May I say something?

The Court: Yes, I want you to say something before you get away so we won't have to call you back.

The Witness: The tellers are instructed when they take a deposit and put a hold on the account,

(Testimony of William Liskey.)

the depositor is so notified that the funds will not be available for a certain number of days.

The Court: Was Geers notified?

The Witness: I have no way of knowing. I was head of the Note Department at that time and, of course, nobody would remember that far back.

Mr. Geers: May I have another question?

The Court: Yes. [69]

Q. (By Mr. Geers): Do you have any set method of notifying the depositor?

A. The teller at the window.

Q. If the man didn't come in for thirty days, you would tell him then?

A. No. If a man makes a deposit there at the window, if the teller is going to hold that amount to have those checks collected, you tell the depositor that you are sorry, but they will have to put a hold on the account for five days until the check clears the bank it is drawn on.

Q. At the time all these checks were written, we did have around \$4,000 in the bank.

A. You had a balance.

Q. The reason your bank was holding those checks and not paying them is because another branch had a check for \$2700 and some dollars, and it was eventually paid off in cash, I think, but at that time you were holding up our whole business, we couldn't buy from people or operate our business because you had all our assets tied up.

The Court: I think you are arguing with the witness. The record speaks for itself. According to the

(Testimony of William Liskey.)

bank records there was sufficient money on deposit to pay the checks.

The Witness: Well, is that legal in this state?

The Court: You are arguing the legal problem with the witness. You can ask questions, but you can't argue with the [70] witness.

Mr. Geers: Is it legal under the state banking laws?

The Court: I am sorry, this witness cannot testify to that.

Mr. Maury: I observe it is a little after 12:00, and the witness can evidently make a run to Norwalk between now and 2:00 and get the deposit slips which back up these deposits in August of 1952 to show us if they were cash deposits or on other banks.

The Court: It might be very important.

Mr. Maury: I do want him back.

The Court: All right. We will take a recess.

Mr. Maury: May he be instructed to get all the other documents?

The Court: Yes. You are instructed to go to the bank and get your records that can throw any light on this transaction and bring them back to court at 2:00 o'clock.

Mr. Maury: Thank you.

The Court: Court will now stand at recess until 2:00 o'clock this afternoon.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day.) [71]

Los Angeles, Feb. 24, 1954; 2:00 o'clock p.m.

The Court: You may proceed.

WILLIAM LISKEY

called as a witness by and on behalf of the Plaintiff, having been previously duly sworn, was examined and testified further as follows:

Redirect Examination

Q. (By Mr. Maury): Mr. Liskey, have you visited the bank in Norwalk where you are employed during the noon hour?

A. Yes, I have.

Q. Have you obtained the deposit slips pertaining to the account of John H. Couch during the month of August, 1952? A. Yes.

Q. Can you tell the Court what deposits were made during the month?

The Court: Have you got the deposit slips? I think they speak for themselves. They should be introduced in evidence if you are going to use them.

Mr. Maury: Surely. I will let opposing counsel see them.

The Court: They may be marked for identification Plaintiff's Exhibit 10. [72]

The Clerk: 10 for identification.

Mr. Maury: There are five different slips here, your Honor, and it is possible we might want a different designation on each one, so may we number them and then have A, B, C, and so forth?

(Testimony of William Liskey.)

The Court: Yes, they may be marked 10, 10-A, 10-B, 10-C and 10-D.

(The documents referred to were marked Plaintiff's Exhibit Nos. 10, 10-A, 10-B, 10-C and 10-D for identification.)

Q. (By Mr. Maury): Calling your attention now to the Defendant Geers' Exhibit A, the Plaintiff's Exhibit 7, and Exhibits 10, 10-A, 10-B, 10-C, 10-D respectively, can you tell us whether or not Exhibits 10, 10-A, 10-B, 10-C and 10-D are reflected in the bank statements which are Geers' Exhibit A and Plaintiff's Exhibit 7?

A. Yes, they are.

Q. I call your attention to Exhibit 10. Can you determine where that is reflected?

A. That is a deposit of \$789.50 received on August—

The Court: I wonder if it would be possible for the witness to mark where it is reflected upon the sheet.

The Witness: Received on August 1, 1952 and posted on the account on August 1.

Q. (By Mr. Maury): You have shown where that is [73] reflected on Defendant Geers' Exhibit A. Can you show it on Plaintiff's Exhibit 7, which is a carbon copy?

A. Yes, that is also on August 1.

Q. Is there a debit in the same month?

A. Yes, there is on August 4.

Q. In the amount of \$789.50?

A. Yes.

Q. What does that indicate?

(Testimony of William Liskey.)

A. That would indicate that this check, one item they deposited on August 1, 1952, was returned for insufficient funds or various reasons from the bank it was drawn on and, therefore, was debited against the account.

The Court: You mean to say after it was deposited, then you took off the deposit, is that right?

The Witness: No, sir.

The Court: Well, was it deposited a second time?

The Witness: It was deposited a second time. However, the first time this check was deposited, it was drawn on, I believe, Security First National Bank in Downey, and they returned it unpaid.

The Court: Then it was redeposited?

The Witness: No. Therefore, we took it off his account and one of the gentlemen evidently picked it up, and then they redeposited the check again.

Q. (By Mr. Maury): What date did they redeposit? [74] A. On August 8th.

Q. Calling your attention to Exhibit 10-A for identification, does this indicate the redeposit of that amount?

A. Yes, it does, the same amount, drawn on the same bank and branch.

Q. I observe on this statement, Defendant Geers' Exhibit A, certain items have the figures LST after them. What does that mean?

A. These were a service charge—well, it is a service charge on a returned check. These dittos are charges for checks which have been returned

(Testimony of William Liskey.)

unpaid. This one is a debit. The check had been deposited and returned. That indicates that that amount was taken out of the account. In other words, it is not a check that the customer wrote against his own account.

The Court: Referring to Exhibit 10-A, I notice the deposit slip says John Couch and Charles Geers, \$789.50. Will you show me on the record where that is deposited to the account of John Couch and Charley Geers?

The Witness: I can show you a name and the date, John Couch.

The Court: According to the bank records, it is only deposited to the account of John Couch, that is, according to the records you have before you. [75]

The Witness: According to this sheet, yes, according to the name that is on the sheet. However, that is the joint account and I would say the signature card governed.

Q. (By Mr. Maury): Calling your attention to 10-B, 10-C and 10-D, can you show the Court where they are reflected as deposits?

A. 10-D in the amount of \$1,263.10 on August 12th.

Mr. Nimocks: I'm sorry. I can't hear you over here.

The Witness: This check in the amount of \$1,263.10 was deposited on August 12th, also posted to the account on August 12th on the original, and it also appears on our certified copy.

(Testimony of William Liskey.)

The Court: This also shows that the account deposit slip is in the name of John H. Couch and Charley Geers, but it only appears upon the statement of John H. Couch, is that right?

The Witness: That's right.

Q. (By Mr. Maury): Will you show where 10-C is reflected?

A. That is \$2,514.30 on August 13th and credited to his account in that amount on August 13th, and also appears on our certified copy, August 13.

The Court: And this 10-C deposit slip is John H. Couch only?

The Witness: Yes, sir. [76]

The Court: And it is in the record of John H. Couch?

The Witness: Yes, sir.

Q. (By Mr. Maury): As to 10-D, will you explain that to the Court?

A. In the amount of \$463.67 deposited August 30, 1952, appears on their statement in that amount on August 30, 1952, and also on our certified copy on that date.

The Court: Isn't that the amount that was transferred from the Couch account to the Couch and Geers account?

The Witness: No, sir. Wasn't it \$400 even?

The Court: You have got it there.

The Witness: Just a second and I will look. Yes. \$400 is, I believe, the balance transferred, isn't it?

The Court: You are testifying, I am not.

(Testimony of William Liskey.)

The Witness: That is what is indicated here, \$400.

The Court: I can't keep track of my own records.

Mr. Maury: That is on the first page of Plaintiff's Exhibit 7.

Q. Calling your attention to the date column on the Defendant Geers' Exhibit A and the date column on Plaintiff's Exhibit 7, the fourth page thereof, can you explain the fact that on Exhibit 7 there is an opening entry apparently on August 31—is that it? A. August 30th.

Q. And this is a continuation from Defendant's [77] Exhibit A, is that right?

A. That is correct.

The Court: Is that August 30th or 3rd?

The Witness: August 30th.

The Court: The fact of the matter, then, is as far as the bank is concerned you never did open up this joint account until August 30th. It was always in the name of Couch.

The Witness: I can't answer that yes or no, but I would say as far as the bank is concerned, we opened it on July 4th.

The Court: But your records don't show it.

The Witness: That is true. She neglected to put the new name on the account.

The Court: If the bank comes in with its records, I will have to accept the bank's records.

Q. (By Mr. Maury): I will ask you, Mr. Liskey, is the name at the top of the statement governing

(Testimony of William Liskey.)

as to the owner of the account or is that merely a mailing address?

A. I would say it was a mailing address. The signature card is the governing item on who is the owner of the account. That is the contractual relationship.

Q. That is the contract between the bank and the customer, is it not? A. Yes, it is.

Q. I observe that the mailing address is just the same on each of these, but that the addressee apparently was not [78] changed until the 1st of September or August 30th, 1952.

A. That's right.

The Court: If that is so, then why weren't the Geers' checks honored? There is plenty of money in the Couch account.

The Witness: At the time, as I said before, those funds were uncollected.

The Court: Are you just telling me they are uncollected? This morning you assumed. Now, do you know whether they were uncollected funds or not?

The Witness: No, I don't know. That would be an impossibility for me, not having handled it myself personally.

Q. (By Mr. Maury): Is there any way you can tell whether or not a deposit made on August 1st would be cleared that day if it were drawn on the Security First National Bank in Downey or close by?

A. We could verify the balance of that check,

(Testimony of William Liskey.)

and that's all. They would say the check is now good. However, five minutes after the phone call the account may be closed out or the balance may be depleted below the amount of our check.

Q. When accounts begin to show returned items, what is the practice of the bank?

A. Then on all their deposits or checks drawn for other checks on branches, we hold the amount until we know [79] that the check is cleared, that the funds are good.

Q. Isn't that written into the bank book agreement between the customer and the bank?

A. I believe it says——

The Court: We have no evidence of a bank book agreement. The only evidence we have is the signature card. If you are going to have a bank book agreement, let's have the bank book.

Mr. Maury: That is very good law, your Honor. We will ask Mr. Geers if he can produce the bank book agreement between himself and the bank.

The Court: Do you have the bank book?

Mr. Geers: I never did have one.

Mr. Maury: Did they give you a bank book?

The Court: You see, he testified he didn't open up the account.

The Witness: They didn't give me a bank book.

Mr. Maury: He testified he went down to the bank and signed a signature card.

The Court: That's right.

Mr. Geers: That's right, and I could have signed that in my own home.

(Testimony of William Liskey.)

The Court: Listen. Don't argue. All we are trying to do is find the facts and when we find out the facts, then we can decide what to do.

Mr. Maury: I would like to read from Exhibit 8 at this [80] time. This is the signature card.

"The undersigned agrees with Bank of America National Trust & Savings Association that this account is to be carried by said bank as a commercial account and all funds which the undersigned depositors have or may have on deposit therein with said bank shall be governed by its bylaws, all future amendments thereof, all regulations present or hereafter to be passed by its Board of Directors pursuant to said bylaws, and by all rules and practices of said bank relating thereto, including interest, extra charges, etc."

That is the agreement with the bank. That includes all the bylaws of the bank.

The Court: What I can't understand is why in the world they didn't change the name of the account to show the two of them, rather than Couch. I can't understand that. They evidently carried a Couch account along with the joint account.

Mr. Maury: I beg your Honor's pardon.

The Court: They even have two sheets to show that they were carrying two separate accounts.

The Witness: Not two separate sheets. There is only one sheet.

Mr. Maury: No, your Honor, there is nothing like that.

The Court: Maybe I am wrong about that. You

(Testimony of William Liskey.)

have John H. Couch and then you have John H. Couch and Charley Geers on [81] August 30th. In other words, you carried it under John H. Couch until August 30th, and on August 30th this was transferred over. Now, the signature card was signed July 2nd. Why did it take pretty near sixty days for the Bank of America to change the name on the deposit.

The Witness: I would say the delay was with the Addressograph Department. I don't myself see where the printing on the statement is so important. It has nothing to do with our relationship with our customer. It is merely for mailing purposes. If a check comes in, we don't refer to the statement for the signature, but refer to the signature card. It has happened before and always happen, not too often, that the names don't get on there as they should. We send them up to San Francisco for the Addressograph Department and they are sometimes a little late in sending in new sheets. In the meantime, we should type it on there, but sometimes our bookkeepers fail to do that.

Q. (By Mr. Maury): During the month of August when there was money on deposit, your bank was honoring checks drawn by Charley Geers, was it not, Mr. Liskey? A. Yes, it was.

Q. As evidenced by Defendant McKibben, Carter, Lewis Exhibit A. Calling your attention to Plaintiff's Exhibit No. 1 and the other bank records—if the witness may have them, your Honor—can you tell from Exhibit No. 1 and the bank [82]

(Testimony of William Liskey.)

records why Exhibit No. 1 was dishonored by the bank?

The Court: I want you to testify to what you know, not what you assume. You have got the official records of the bank there. You can testify to what those records are, unless you have some personal knowledge of your own.

The Witness: This check is in the amount of \$600 drawn on the 13th of August. We received it on August 18th or 19th. This doesn't—we don't necessarily receive it on this day. It is always this day or the day after. On August 18, on his statement he had a balance to cover that \$600, and also on August 19th.

Q. (By Mr. Maury): Can you ascribe any reason for that particular check having been dishonored?

The Court: Again I want you to testify from the records of the bank or your own personal knowledge. I don't want you to assume something you don't know anything about.

Mr. Maury: If you can't testify, Mr. Liskey, you just say so, because if you did not do it, you are in no wise responsible, but, on the other hand, we want to know either from the bank records or from your own knowledge just why it was that that check was dishonored.

The Witness: I have no personal knowledge whatever why it was dishonored.

Q. (By Mr. Maury): Did you bring with you

(Testimony of William Liskey.)

this afternoon the rejected check records of your branch of the [83] Bank of America?

A. Yes, I did.

Q. Can you find that item thereon, namely, Plaintiff's Exhibit 1 for \$600?

A. Yes. I find that item on August 19, 1952.

Q. Do you find other items there drawn by the same drawer?

A. Yes, I do. One for \$200 and one for \$1,715.75.

Q. That would make, then, a total of over \$2500, would it not? A. I guess it would.

Q. On the date those three checks were presented to the bank, do these statements show there was \$2500 on deposit?

A. No. The statement shows a balance of \$1,-089.77.

The Court: The \$600 check could have been paid?

The Witness: I would say it could.

Q. (By Mr. Maury): I notice that there is a deposit on August 13, 1952, drawn on the bank with the call number 90-1416. Is that the same call number of the bank upon which the \$789.50 check was drawn earlier in the month which bounced?

A. Yes, that is the same number, same bank and branch.

Mr. Maury: At this time, your Honor, I think we will offer 10, 10-A, 10-B, 10-C and 10-D for identification.

The Court: They may be received in evidence.

The Clerk: 10, 10-A, 10-B, 10-C and 10-D. [84]

(Testimony of William Liskey.)

(The documents referred to were received in evidence and marked Plaintiff's Exhibit Nos. 10, 10-A, 10-B, 10-C and 10-D.)

Q. (By Mr. Maury): If, then, a deposit was made of \$2,514.30 on August 30th on that bank, the Security First National Bank in Downey, when in your experience with banking practices would it have cleared?

A. Well, if it was the middle of the week——

The Court: That depends a great deal on what community the check comes from. If it comes from San Francisco, it couldn't clear as fast as one here locally.

Mr. Maury: That is what I asked. He said it was the Security First National Bank in Downey.

The Court: You are referring to just that one check?

Mr. Maury: Yes, I am asking how soon it would clear. It is deposited on the 13th of August.

The Witness: If we took it at the beginning of the week or the middle of the week, I would say four days. Possibly five days if taken on Saturday, because you have Sunday in there. The reason is that it doesn't go directly to Downey. It goes into Los Angeles first.

The Court: May I ask a question about procedure?

Mr. Maury: Certainly, your Honor.

The Court: A depositor comes in and deposits a sizable amount. You don't let the depositor draw upon that deposit [85] until it has been cleared. Do

(Testimony of William Liskey.)

you show in your official records that that deposit has been made before it has cleared, or do you hold it until it is cleared before you make a record upon your official records, or, if you put it upon your official records, what kind of record do you put there to indicate that no check is to be drawn against the account? What is your procedure?

The Witness: To begin with, we are on delayed business. If we receive a deposit today, it won't be posted until tomorrow. If we wish to hold the funds, we will post the deposit to the customer's account as of today's date. However, we have a little form, a temporary hold order we attach to the account, and you put on it the amount, the bank it is drawn on, how many days it should be held, and why. Before you do that, you tell the customer at the window he will be unable to draw against that for a number of days.

The Court: To your knowledge, can you testify you ever saw one of those holds on this particular account?

The Witness: No, I cannot.

The Court: To your own knowledge, you never told either Mr. Couch or Mr. Geers that there was a hold order, did you, that is, to your own knowledge?

The Witness: No, sir.

Q. (By Mr. Maury): You never met Mr. Couch and Mr. Geers, did you, Mr. Liskey? [86]

A. Maybe I did two years ago, I don't know,

(Testimony of William Liskey.)

but I don't believe so. I have met a lot of them when they come in the bank.

Q. To go on with this inquiry, we haven't determined about the \$600, but as to the check for \$1,715.75, which was drawn August 13, 1952, can you determine from the records before you why that check was dishonored?

A. No, from the records I cannot determine. Just a minute. Maybe I was too fast there on the draw. I will have to take that back. We received this check, it was presented to us on the 19th of August, 1952, and at that time there was not sufficient funds in the account to cover that check. The check was for \$1,715.75, and the balance in the account was \$1,089.77.

Q. Calling your attention now to the Plaintiff's Exhibit 3 in evidence, can you tell us why this check was dishonored by the bank?

Mr. Nimocks: What is the amount and date?

The Witness: \$1,432.20. No. The date this check was presented for payment was on August 12, 1952. From the records I have here, I find no reason why the check should be returned. We have a double date on the 12th.

Q. (By Mr. Maury): What do you mean by double date?

A. We have August 12th there twice.

Q. I don't see where you mean. [87]

A. On August 12th, balance \$1,341.38, and also on August 12th, there is a deposit of \$1,263.10,

(Testimony of William Liskey.)

which gives us a balance of \$2,694.58. That is evidently the true balance.

Q. I understand that the Defendant Geers' Exhibit A and this third page of Plaintiff's Exhibit 7 are supposed to be carbon copies or exact duplicates of one another? A. Yes.

Q. I wish you would go down the line with me on this balance.

A. I see it already. You are talking about the 12th. I was just talking about this one.

Q. I am talking about the list of figures there.

A. Here we are. I can tell you what happened there, but I can't tell you what happened from my own experience.

Q. From your knowledge of banking procedure, can you explain this?

A. Yes. The bookkeeper picked up a balance as of the 11th, posted three checks, and totaled out the machine, and then she went on and discovered she had neglected to post a deposit, all in a matter of thirty seconds, probably, so she picked the balance up again and posted the deposit.

Q. It comes out the same in both, is that right?

A. That's right. Therefore, we have two dates as of the 12th.

Q. That explains the discrepancy between the two, then? [88] A. Yes.

Q. Have we talked about Exhibit No. 5? That is the check for \$1,490.60. Can you tell us why that was dishonored by the bank?

A. No, I cannot.

(Testimony of William Liskey.)

Mr. Nimocks: Can you talk just a little louder?

The Witness: I am sorry. No, I cannot say why the check was dishonored on that date. The check was for \$1,490.60.

Q. (By Mr. Maury): What was the balance in the bank on that date?

A. On August 13 the balance was \$3,705.52.

Q. On August 13th, what deposits were made?

A. A deposit of \$2,514.30.

Q. And the day before that, what deposit had been made? A. \$1,263.10.

Q. As evidenced by the deposit slips 10-B and 10-C, is that correct, in evidence?

A. Yes, that is correct.

Q. Would either of those deposits have had time to clear by the time——

The Court: Can you tell me what those deposits were?

The Witness: They were checks drawn on the Security First National Bank in Downey.

The Court: Were they personal checks?

The Witness: I do not know. [89]

Q. (By Mr. Maury): Were they drawn on the same bank as the deposit of \$789.50 that bounced early that month? A. Yes, they were.

Q. If they were items drawn on that bank in Downey, that is the Security First National Bank, evidenced by Call Number 90-1416, one of them having been deposited on August 12th and the other August 13th, would they have had time to

(Testimony of William Liskey.)

clear by the time Plaintiff's Exhibit 5 was presented to the bank at Norwalk?

A. No, they would not have.

Q. Without those two deposits, what was the balance in the account on August 12 when Plaintiff's Exhibit 5 was presented?

A. Well, we have three checks there on that same date, which we have to take into consideration. Did you say August 12th?

Q. Yes.

A. On August 12th, the balance on the ledger shows a balance of \$2,694.58.

Q. With the two deposits made on August 12th and 13th, respectively, how much would there have been without those two deposits? Isn't it just about zero, a very few dollars?

A. Perhaps I am not following you.

Q. We have a balance on August 13 of \$3,705.52.

A. That is correct. [90]

Q. You show the same balance on August 14 less \$1, and the same balance on August 16, less \$2.

A. That's right.

Q. We have deposits here on August 12 of \$1,263.10.

A. Right.

Q. And on August 13 of \$2,514.30.

A. Yes.

Q. Both drawn on the Security First National Bank of Downey.

A. Yes.

Q. We note that the first deposit this month of \$789.50 was drawn on the same bank, and it was deposited August 1 and was back dishonored on

(Testimony of William Liskey.)

August 4. Without these two deposits on August 12th and 13th, respectively, would the balance in the bank at that time have been sufficient in cash, liquid assets to the credit of Couch and/or Geers, to meet the check for \$1,490.60?

A. No, it would not.

The Court: Now, I want to ask you a question. On August 12th there was a deposit of \$1,263.10. On August 12 you cleared a check for \$1,775.48, another check for \$1,116.20, and another check for \$1,155. Why did you clear three checks and refuse to clear the fourth or fifth on the same day?

The Witness: Are you asking me from my own personal knowledge? [91]

The Court: I am asking you to testify from the records. That is the only thing you know. All I have is the records. You have got a deposit on a certain date. You recognize and pay three checks, one for \$1,775.48, one for \$1,116.20, and one for \$1,155. On that day you get a deposit of \$1,263.10. When the day is over with, you have \$2,694.58.

Why did you refuse, do you know why the bank refused to clear one check?

The Witness: No, I do not.

The Court: Also, on August 13th there shows a deposit of \$2,514.30. On that day you paid, you cleared a check for \$1,503.36. Why was that check cleared and other checks refused to be cleared, do you know of your own knowledge?

The Witness: No, I don't.

(Testimony of William Liskey.)

Q. (By Mr. Maury): What is go-back time, Mr. Liskey?

A. Oh, I would say approximately between 3:00 to 4:30. You have to average it out. Some afternoons you may start at 3:00, a few minutes after, on busier days they may not be able to have them ready until 4:00 or after.

The Court: Will you tell me what you mean by the term go-back?

Mr. Maury: That is what I am coming to.

Q. What does that term mean in banking parlance?

A. At that time all these checks that have been—that have gone through the bookkeepers, the bookkeepers find [92] there is either a hold on the account or insufficient funds or irregular signature, find they cannot pay them, they put them on this list. This is what we call our rejected check record. They describe it, put the reason, and then the disposition, where the check will be returned to, and any charges, if any. The head bookkeeper gets those at approximately that time, and the manager reviews that list. and if there are any credit arrangements between certain customers and the bank as to paying their checks, he will go ahead and pay them, and those that have no credit arrangement, he will return them to the bank they came from.

Q. I would like to know from this rejected check record why the Plaintiff's Exhibit 1, 2, 3 and 5 are shown to have been rejected by the bank, from the rejected check record?

(Testimony of William Liskey.)

A. Do you want them separately?

Q. Yes, if you would, please.

A. The check for \$1,490.60——

Q. Plaintiff's Exhibit 5.

A. That was returned for not sufficient funds.

Q. Yes, sir.

A. Check in the amount of \$1,432.20 on August 12th was returned for not sufficient funds.

Q. Plaintiff's Exhibit 3, that is.

A. And the amount of \$1,715.75 on August 19th——

Q. That is Plaintiff's Exhibit 2. [93]

A. That was returned for not sufficient funds.

Q. And \$600?

A. That \$600 on August 19 was also returned for not sufficient funds.

Q. Those are the official records of the bank kept in the regular course of business?

A. Yes, sir.

Q. Can you tell me whether or not the Plaintiff's Exhibit 4 for identification was ever presented to your bank, that is, a check for \$1,365.90, with the questioned signature on it?

A. Yes, it was presented to our bank for payment, I would say on—well, this indicates it was sent from our bank on August 15, 1952. It was not sent through the usual channels, but as a collection item.

Q. Can you find that upon this rejected check record?

(Testimony of William Liskey.)

The Court: You say that was received August 15?

The Witness: I would say it was the 16th, and it would have been the day after it left the other bank. On the 16th then. This record doesn't indicate we had received the check prior to that time.

The Court: The question is what was it turned down for?

The Witness: I am sorry. From the records, I cannot say.

Mr. Nimocks: What is the answer?

The Witness: From the records, I can't say why the check [94] was returned.

The Court: The bank statement shows a balance of \$3,732.

The Witness: That is correct.

Mr. Maury: May this be marked for identification?

The Court: It may be marked for identification Plaintiff's Exhibit 11.

The Clerk: Plaintiff's Exhibit 11 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 11 for identification.)

Q. (By Mr. Maury): Calling your attention to this form, are you familiar with that type of form?

A. Yes, I am.

Q. What is it?

A. It is an incoming interbranch collection.

Q. By that what do you mean, what is its function and how does it operate?

(Testimony of William Liskey.)

A. The customer of the bank, not necessarily a customer, may go into one of our branches with a check drawn on another branch and wishes to cash the check, and perhaps for some reason they don't want to cash it there, or perhaps it has been dishonored previously, and he will go over to the Collection Department and ask if they will accept the check for collection and forward it to the bank upon which it is drawn. If they do accept it and it is one of our branches, that branch will use this form to send to the other branch [95] with the check and instructions will be on it to hold a certain number of days, and if not, we will return it within twenty-four days if there was not sufficient funds, but the purpose is to collect the amount of the check.

Q. From the branch filled in in typing, what does that particular document indicate to you, what kind of transaction was had?

A. It would indicate we received this check in the amount of \$4,288.70 from our Soto-Hostetter branch. It was a check and their instructions were to hold ten days if necessary.

Q. Could that be a group of checks?

A. It could be, yes. Under "documents" here it says checks, it doesn't say check. It could, then, be a group of checks.

Q. The date is what? A. August 15.

Q. 1952? A. 1952.

The Court: Let me ask you a question. If a depositor comes in and gives you a check for collec-

(Testimony of William Liskey.)

tion, you don't give him credit upon his deposit account, do you?

The Witness: No, sir.

The Court: The fact that on August 8th and 11th and 12th and 13th you got sizable deposits on your record does not [96] indicate that they were deposits for collection.

The Witness: No, they were not deposits for collection. Those are two separate departments altogether.

Q. (By Mr. Maury): Calling your attention to the exhibit you have in your hand, which is Exhibit 11 for identification, was that received by your branch or sent from your branch?

A. Received by our branch.

Q. From another branch? A. Yes, sir.

Q. In other words, it indicates somebody else sent the checks to you, is that right?

A. That is correct.

Q. With instructions to hold for ten days if necessary? A. That's right.

Q. Does it indicate who sent these checks to you from another branch?

A. The other branch's customer?

Q. Yes.

A. Quaker Oats Company.

Mr. Maury: I now offer that in evidence.

Mr. Nimocks: Just a moment. I will object to that. There is no itemization of that. We have no way of knowing what those checks are, so I can't see it is material.

(Testimony of William Liskey.)

The Court: Overruled. It may be received for whatever it [97] is worth. It may be received in evidence.

Mr. Maury: You can't prove every fact in a case by one exhibit or one witness.

The Clerk: Plaintiff's Exhibit 11 in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 11.)

Q. (By Mr. Maury): Calling your attention to the Defendant Geers' Exhibit A in evidence and to the dates August 14, 16 and 19, and to the items, four in number, each one being \$1 and followed by the letters LST, can you tell the Court what that indicates?

A. That \$1 would indicate a check had been returned unpaid and a dollar is the charge.

Q. Made against the customer?

A. Made against the customer by the bank.

Q. For a check?

A. For a check we did not honor.

Q. Calling your attention to these rejected check records, can you tell us whether there are any other checks on here drawn by Charley Geers or John H. Couch during the month of August, 1952? In other words, would you give us a list of all rejected checks which were drawn by them and read them into the record?

Mr. Geers: Could I make an objection? I don't see what other checks have to do with this case.

The Court: Overruled.

(Testimony of William Liskey.)

The Witness: On August 5, 1952, check in the amount of \$1475 drawn by John Couch returned for not sufficient funds.

On August 7, 1952, check in the amount of \$10 drawn by John Couch returned for not sufficient funds.

On the same date in the amount of \$642 drawn by John Couch, returned for not sufficient funds.

On the same date, \$22.40 by John Couch, returned for not sufficient funds.

Also, the same date, \$1,503.36, drawn by John Couch returned for not sufficient funds.

On August 9, 1952, check in the amount of \$136.48, drawn by John Couch, not sufficient funds.

On August 12, 1952, check in the amount of \$1,432.20, drawn by Charley Geers, returned for not sufficient funds.

August 13, 1952, check in the amount of \$1,490.60, drawn by Charley Geers, returned for not sufficient funds.

On the same date, check in the amount of \$43.20 by John Couch, returned for not sufficient funds.

August 19, 1952, check in the amount of \$200 drawn by Charley Geers, returned for not sufficient funds.

On the same date, check in the amount of \$600 by Charley Geers, not sufficient funds.

Same date, \$1,715.75, drawn by Charley Geers, returned for not sufficient funds. [99]

August 20, 1952, check in the amount of \$3.23,

(Testimony of William Liskey.)

drawn by Charley Geers, returned for not sufficient funds.

August 22, 1952, check in the amount of \$136.48 by John Couch, not sufficient funds.

On the same date, \$25 by John Couch, not sufficient funds.

Also, \$148.83, John Couch, not sufficient funds.

And \$150 by John Couch, not sufficient funds.

On August 26, in the amount of \$25 drawn by John Couch, returned, not sufficient funds.

August 28, 1952, check in the amount of \$142, drawn by John Couch, not sufficient funds.

September 2, 1952, check in the amount of \$148.83, drawn by John Couch, returned, not sufficient funds.

September 3, 1952, check in the amount of \$136.48, drawn by John Couch, not sufficient funds.

Mr. Nimocks: Your Honor, may I inquire as to what that information is coming from? Has that been marked for identification?

The Court: He is really just reiterating what is already in evidence. It has been in evidence already.

Mr. Nimocks: I was just curious as to what he was reading from.

Mr. Maury: I am sorry. I thought you had seen these, counsel.

The Court: While you are thinking of a question, I have [100] a question I want to ask.

Mr. Maury: Yes, your Honor.

The Court: I want to be sure I understood about Exhibit 11. This is your interbranch collection. Do I understand that the checks were sent from your

(Testimony of William Liskey.)

branch to this Soto-Hostetter branch for collection or was it vice versa?

The Witness: It was sent to us from the Soto-Hostetter branch, sent by them to our branch.

The Court: This is dated August 15.

The Witness: Yes.

The Court: It would get there the following day, August 16.

The Witness: I would think so, yes.

The Court: On August 16, according to your own records, there was \$3,702.52 on deposit.

The Witness: That is correct.

The Court: If you got these checks, and you say there was more than one check, wouldn't you have taken care of the checks you could take care of out of this account?

The Witness: Yes, very definitely.

The Court: Why didn't you, do you know?

The Witness: I had nothing to do with it.

The Court: You don't know why?

The Witness: No.

The Court: It also appears that on August 19 the bank [101] paid a check for \$2,611 to somebody, and on August 25 they paid a check for \$1,020.52. In other words, these two checks were paid some time after you had received these checks from the Quaker Oats Company. Could it be that that interbranch collection said the drawee was Charles Geers? The account I have been referring to is John H. Couch. Could it be the fact that you

(Testimony of William Liskey.)

didn't try to collect these Geers' checks from John H. Couch account?

The Witness: No, I don't believe so.

The Court: You don't know why they weren't collected?

The Witness: I don't know why, no.

The Court: I am through with the witness.

Mr. Maury: I don't want to argue the case at the present moment, your Honor.

The Court: That's all right.

Mr. Maury: On the other hand, I might ask him to answer what I think is the question in your Honor's mind with reference to the Defendant McKibben, Carter and Lewis Exhibit A, a check drawn by Charley Geers during this period.

Q. Was that made out on the account of John H. Couch, the account that is designated John H. Couch upon the ledger sheet?

A. On August 7, 1952, Charley Geers drew a check in the amount of \$2,611.75. Our bank paid that check on August 19th on the account that appears to be that of John Couch. [102]

Q. The bank honored this signature?

A. Yes, they did.

The Court: What I can't understand is if they were honoring Geers' signature on this account, why, when they received these Quaker Oats checks on August 16th, they didn't immediately collect them out of this account. The money was there.

The Witness: It might not have been a good balance.

(Testimony of William Liskey.)

Mr. Maury: August 15, 1952 was Friday, and I think the Court takes judicial notice in 1952 the Bank of America was the only one open on Saturday around here.

The Court: All right. What would be the next business day?

Mr. Maury: The next business day for the Security First National Bank or any other bank than the Bank of America would be Monday, which would be the 19th. We see here from the statement, and this is argument, I must say, but I am trying to clear up a point, the deposits were made on the 12th and 13th. These checks hit the 16th, let us say, for collection. They are in one department. This \$2,675 check hits on the 19th, which is very close in point of time there, so obviously the bank refused other checks because of the funds not having cleared, and cleared this check of \$2,611. Some checks are cashed at the window. So the record shows there was NSF as to these checks, and these are the records [103] kept in the regular course of business of the bank. With a bad check record like that and another record of deposits of bad check items, I think the bank was warranted in being amply cautious about this particular account. I wasn't there either. I don't want to argue this case here.

The Court: Do you have any more questions for this witness?

Mr. Nimocks: May I ask a few questions?

(Testimony of William Liskey.)

The Court: I would like to finish with the witness before the afternoon recess.

Mr. Nimocks: I have just a few questions.

The Court: The bank is paying his salary, and I don't want to keep him any longer than is necessary.

Mr. Nimocks: I thought we might try to clarify this process about collection.

Cross Examination

Q. (By Mr. Nimocks): As a matter of fact, Mr. Liskey, when a deposit appears on this particular sheet, and I am referring now to Geers' Exhibit A, which I understand is the original of No. 7, I believe it was, when this deposit appears on this sheet, you have actually given that man credit for that amount of money, is that not true, subject to being charged back for any return item that might come in, is that correct? [104]

A. That's right.

Q. If you accept an item for collection, that item does not appear upon this sheet until such time as the funds have been received by your bank and the item is collected.

A. And then only if he gives the instructions.

Q. But when these appear upon here, he has been given credit in the full amount even though the checks have not cleared yet, subject to being charged with such checks as might be returned?

A. That is correct.

Q. What do you do on collection items, sir? Do

(Testimony of William Liskey.)

you put those in a suspense account or how do you handle those?

A. The customer is given a receipt. We don't recognize it as funds, you might say. The customer gives us his check and we give him a receipt for that check, and any money is out of his pocket, that's all. We have the check there. We don't want it in an account.

Q. That item does not affect the balance in any way until the money has been received, is that correct?

A. That is correct.

Q. This Plaintiff's Exhibit 9, Mr. Liskey, is this a composite drawn from the various sheets you were testifying to?

A. This is, you might say, a recapitulation of these sheets here. [105]

Q. But it contains only the items which pertain to Charley Geers and John H. Couch, is that correct?

A. That is correct.

Q. I am unable to locate Plaintiff's Exhibit 1 or a check in the amount of \$600 that was returned. Was that merely an error in picking them up from these sheets?

A. Yes. I would say that was my error, because we have discussed that just a few minutes ago, that \$600. I pointed that out earlier, too, that we had left that off of there.

Q. Was Plaintiff's Exhibit No. 2 in the amount of \$1,715.75?

A. Yes. Those appear on this one here as of August 19.

(Testimony of William Liskey.)

Q. That is just an error in transcribing, is that correct? A. Yes, it is.

Q. I presume the same way with Plaintiff's Exhibit No. 4 in the amount of \$1,365.90, which I think you show upon August 15 or 16.

A. \$1,365.90?

Q. Yes, Plaintiff's Exhibit No. 4.

A. That would not appear.

Q. That was a collection item?

A. Yes, that would not appear on there. [106]

Q. As to the collection sheets submitted by your Soto branch—was that the name? A. Yes.

Q. That shows an aggregate amount of \$4,288.70 and no checks. Is it not possible that included checks which had previously been returned by your bank? A. Yes, that is possible.

Mr. Nimocks: That's all, your Honor.

Mr. Maury: Just one or two further, your Honor.

Redirect Examination

Q. (By Mr. Maury): When an account has a record of frequent bad checks and returned items, when you credit an item to the account at the deposit, is it credited as a cash item subject to being charged back, or is it, as you have previously described, credited subject to collection?

A. It is more along the lines of a collection, because although it appears on his sheet at the same time, a notation appears that it is being held and the customer is so informed.

Q. Doesn't it depend upon the customer's credit,

(Testimony of William Liskey.)

whether the item is sent through as a cash item or whether his account is flagged?

A. Very definitely.

Q. Will you tell the Court what the determining [107] factors are?

A. Well, if the customer has quite a few checks he deposits that are returned or if he is in the habit of drawing checks against insufficient funds himself, then that would be a determining factor in holding all deposits until those checks have been paid and we have received our money on them.

Mr. Maury: Could we have our recess, your Honor, and then if we wish to recall the witness, may we do so?

The Court: We will now take a recess until twenty minutes after 3:00.

(Recess.)

Mr. Maury: As far as we are concerned, we are through with the witness.

Mr. Geers: May I ask the witness a question?

The Court: Yes.

Cross Examination

Q. (By Mr. Geers): If Johnny Couch had come in after the close of business on August 13, we will say he came into the bank himself in person on the 14th or 16th——

A. At the close of business?

Q. He had come to the window and written a check for this amount of money, could he have

(Testimony of William Liskey.)

closed the account out, [108] and would you have accepted his check in that amount?

A. We would have.

Mr. Geers: That's all. Thank you.

Redirect Examination

Q. (By Mr. Maury): What day was that?

A. August 16.

Q. \$3,702.52. If there was a flag on the account, would you have accepted his check at the close of business on that day?

A. Not if there was a flag on the account, no.

The Court: May this witness be excused now?

Mr. Nimocks: There is a new question now.

Recross Examination

Q. (By Mr. Nimocks): What do you mean, a flag on the account, Mr. Liskey?

A. He meant the flag where you put stop payment or hold. I meant the temporary hold.

The Court: This witness testified he never saw a temporary hold on this account.

Q. (By Mr. Nimocks): Do you keep a permanent record of those temporary holds or flags or anything of that nature? [109]

A. The flags we do, because they are stop payment. We keep those until the customer releases them. But the holds, when the time is up, the bookkeeper pulls them off and throws them in the wastebasket.

(Testimony of William Liskey.)

Q. So you have no way of knowing whether there was any hold on this at all? A. No.

Q. Referring to Plaintiff's Exhibit 8, the signature card, do you know whether this signature is the signature of Charley Geers?

A. I would not know on any of these signature cards.

Q. Does it appear to be the same signature as is on this check here?

Mr. Maury: Which is that, counsel?

Mr. Nimocks: Excuse me. 1.

The Court: I don't think this witness is a handwriting expert at all. He testified a little while ago and if there had been an objection I would have sustained the objection.

Mr. Maury: Geers testified that was his signature on the check, Exhibit 1.

The Court: That's right.

Mr. Nimocks: Mr. Maury raised the question about the handwriting——

The Court: If Mr. Geers did not sign it, he can get up here and testify he did not sign it. He can meet that issue. [110]

Mr. Nimocks: Thank you, your Honor.

The Court: May this witness be excused?

Mr. Nimocks: Yes.

The Court: My advice is to get out of here as quickly as possible.

The Witness: I am on my way.

The Court: Call your next witness.

Mr. Maury: I will call Mr. Brooks.

WILLIAM B. BROOKS

called as a witness by plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: Take the stand, please. State your name.

The Witness: William B. Brooks.

Direct Examination

Q. (By Mr. Maury): Mr. Brooks, what is your occupation? A. I am a district representative.

Q. By whom are you employed?

A. I am employed by Glesby Bros. Grain & Milling Company.

Q. What business are they in?

A. They are in the manufacturing feed business.

Q. How long have you been with them?

A. Seven months.

Q. During the month of August 1952, by whom were you employed?

A. In August 1952 I was employed by the Quaker Oats [111-14] Company.

Q. What was your capacity there?

A. I was district representative for Riverside County.

Q. Did you have under your jurisdiction the area of Perris? A. Yes, I did.

Q. Are you acquainted with Mr. McVicker and Mr. Ohlson, growers up there? A. Yes, I am.

Q. How long had you known them?

A. Approximately from 1951, July 1951, to the present date.

Q. Were you acquainted with Mr. John Couch?

(Testimony of William B. Brooks.)

A. Yes.

Q. How long had you known him?

A. Approximately the same time, 1951. I don't know the exact date when I first met him.

Q. Will you state to the court the extent of your knowledge of Mr. Couch?

A. My personal knowledge is very sketchy.

Q. What business was he in?

A. In the business of buying and processing poultry.

Q. From whom did he buy the poultry?

A. I have no knowledge of any specific one.

Q. Generally speaking. [115]

A. Processors, raisers of poultry.

Q. Were these growers frequently customers of Quaker Oats? A. No.

Q. They were not? A. No.

Q. Did you know of Mr. Couch's reputation in the poultry industry in and about Riverside County?

A. Yes.

Q. Will you state to the court what that reputation was?

A. His reputation was that—not very favorable.

Q. What was his reputation for veracity and integrity?

A. I have no knowledge of his integrity. I have only knowledge of his paying record.

Q. That is his paying reputation?

A. His paying reputation to my knowledge was very poor.

Q. Are you acquainted with Mr. Geers?

(Testimony of William B. Brooks.)

A. No. May I correct that? I have met Mr. Geers.

Q. When did you met him?

A. I met him in—I am not sure of the exact date, but I would say some time in June 1952.

Q. Where? A. At Perris, California.

Q. What was the occasion?

A. I was making a call on my dealer, Dan Holver. Mr. [116] Geers and several, apparently, truckers came though the scales and weighed a lot of chickens. I talked to Mr. Geers and introduced myself and he introduced himself to me. We exchanged cards. He asked me if I knew of any chickens that were available for purchase in the area at that time.

I told him I had no knowledge of any at that time, that there was one flock that might possibly be available at a later date. That was the extent of my conversation with him.

The Court: Talking about chickens?

The Witness: Chickens, yes.

Q. (By Mr. Maury): Did you have any discussion at all concerning turkeys? A. No.

Q. Did you ever hear of Mr. Geers later?

A. Yes.

Q. Will you state whether you ever heard of Mr. Geers in connection with Mr. Couch?

A. Yes, I have.

Q. When was the first time you heard of the two as connected?

A. The first time was at the meeting at the

(Testimony of William B. Brooks.)

scales, as I told you. Mr. Geers gave me a card of the Park Avenue Poultry business, and wrote John Couch's and his own telephone number on it and gave it to me.

Q. As a result of that meeting and that card of Mr. [117] Couch with the telephone number, did you do anything with respect to your growers?

A. No.

Q. Did you at any time go out there and have any conversation with your growers concerning Mr. Couch and Mr. Geers? A. Yes.

Q. When?

A. On quite numerous occasions.

Q. When was the first time?

A. Are you referring to turkey growers?

Q. Yes.

A. I would say some time in the early part of August, I don't recollect the exact date, one of our growers, Carl Ohlson, advised me upon my call that he had sold turkeys to Charley Geers and John Couch and, of course, part of my duties in supervising these accounts was to make a report of the conditions and of the final sales and disposition of the birds, and Mr. Ohlson had checks he had received. He had not yet turned them in. I took the checks and sent them in to the company together with my report of that sale.

At that time I told Mr. Ohlson that the Park Avenue Poultry was not on our approved buyers list, and under any other circumstances, if any other birds should be sold to them, he should call

(Testimony of William B. Brooks.)

our credit department prior to making any [118] sale.

Q. What do you mean by "approved buyers list"?

A. The Los Angeles office issued to the representatives a list of poultry buyers who had been investigated and found to be financially solvent and, as far as their past buying record is concerned, have clean records. We were instructed to permit our growers to sell to anybody on that list without making a specific call to secure permission. If the name of the buyer was not on that list, the grower was instructed, and I so instructed all of my growers, to call the credit department in Los Angeles collect prior to making any sale of turkeys.

The Court: I understand they could make sales of turkeys to certain individuals without calling?

The Witness: Yes.

Q. (By Mr. Maury): Did each of your growers have that list?

A. No, the growers did not have the list. The district representatives were furnished with the list.

The Court: But they did have authority to sell the turkeys to people who were on the list?

The Witness: I had authority to give them the authority to sell.

The Court: Well, you did give authority to sell?

The Witness: To people on that list, yes. [119]

Q. (By Mr. Maury): Calling your attention to this document—

(Testimony of William B. Brooks.)

May this be marked plaintiff's next in order for identification, your Honor?

The Court: It may be marked Plaintiff's Exhibit 12 for identification.

The Clerk: Plaintiff's Exhibit No. 12 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 12 for identification.)

Q. (By Mr. Maury): Is this your signature thereon, Mr. Brooks? A. Yes, that is.

Q. Who are the other signers thereof?

A. Carl W. Ohlson and Marian T. Ohlson.

Q. Are they the growers you just mentioned?

A. Yes.

Q. Was that signed by them in your presence?

A. Yes, it was.

Mr. Maury: We offer the same in evidence, your Honor.

The Court: It may be received in evidence.

The Clerk: Exhibit 12 in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 12.)

Q. (By Mr. Maury): Are you acquainted with Mr. and Mrs. [120] Harry McVicker?

A. Yes.

Q. Were they in 1952 growers in the Perris area? A. Yes, they were.

Q. Did Quaker have an agreement with them similar to that with the Ohlsons?

A. Yes, they did.

(Testimony of William B. Brooks.)

Q. Do you know Mr. Edward Leach?

A. Of Perris?

Q. No, of Quaker. A. I can't recall.

Mr. Maury: I am not quite sure it is Edward, either. I would like to have this document marked for identification.

The Court: It may be marked Plaintiff's Exhibit 13 for identification.

The Clerk: 13 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 13 for identification.)

Q. (By Mr. Maury): Are you familiar with this turkey grower agreement, Plaintiff's Exhibit 13 for identification? A. Yes.

Q. Is that document kept by Quaker Oats in the regular course of its business?

A. Yes, that is the firm. [121]

Q. Are you familiar with the signers, or the signatures thereon?

A. I am familiar with the signature of Harry McVicker and Ruth McVicker as growers.

Q. Is that their signature?

A. Yes, it is.

Mr. Maury: We offer that in evidence, your Honor.

The Court: It may be received in evidence as Plaintiff's Exhibit 13.

The Clerk: 13 in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 13.)

(Testimony of William B. Brooks.)

The Court: May I go back and ask this witness a question?

Mr. Maury: Yes, your Honor.

The Court: You said a little while ago the growers were authorized to sell their turkeys to certain individuals.

The Witness: Yes.

The Court: Did you give that authorization to growers in writing?

The Witness: No.

The Court: Just orally?

The Witness: That's right.

Q. (By Mr. Maury): Did you ever give any grower any authorization to sell turkeys to Charley Geers or to John [122] J. Couch?

A. No, sir.

Q. Either orally or in writing? A. No.

The Court: The reason I am asking is that Exhibit 12, and I assume also 13, provide growers shall not encumber or otherwise dispose of said turkeys without a prior written consent. This witness didn't give written consent. He gave oral consent.

Mr. Maury: That's right. He never gave any consent at all to this particular sale.

The Court: I know, but he gave oral consent to sell the turkeys.

Mr. Maury: But not to sell these turkeys.

The Court: No.

Mr. Maury: That's what we are talking about, and what he did with others is not material.

The Court: All right.

(Testimony of William B. Brooks.)

Q. (By Mr. Maury): Calling your attention to Plaintiff's Exhibits 1 and 2 in evidence, have you ever seen those documents before?

A. Yes. I have seen Exhibit No. 1. In fact, that is my writing on the back of it. I cannot swear definitely I have seen this one. I believe I have but I can't swear to it.

Q. That is Exhibit 2. You testified a moment ago that [123] you had heard from Ohlson of a sale of turkeys by Ohlson to Geers and Couch.

A. That's right.

Q. And that he had some checks.

A. Yes.

Q. Do you know if those are the checks?

A. I know this one. I believe this one was.

The Court: Identify the exhibits for the record.

The Witness: Exhibit 1 I have seen. I got it from Mr. Ohlson personally. Exhibit 2, I am unable to say positively. I did take a check, but I can't swear without consulting my records that that is the check.

Q. (By Mr. Maury): Do you have copies of those records here? A. No.

Q. But you do remember you got two checks from the man? A. Yes.

Q. And that is what alerted you about Couch and Geers?

A. No, I wouldn't say it alerted me.

Q. What did you do thereafter with respect to Couch and Geers?

(Testimony of William B. Brooks.)

The Court: Did you get the two checks at the same time?

The Witness: Yes.

The Court: These checks are dated 8-13. Do you know when you got them? Did you get them on the 13th or 14th? [124]

The Witness: I can't say the exact date. It was very close to that time.

The Court: You didn't pick them up before the 13th, did you?

The Witness: No.

The Court: You are sure it was the 13th?

The Witness: No, I can't swear to that one way or the other. I have sent a report in to the office of the time. However, I can't swear to the exact date at this time.

The Court: All you know is you picked up these two checks around the 13th somewhere.

The Witness: Yes.

Q. (By Mr. Maury): Do you remember whether or not they were post-dated?

A. They were not post-dated.

Q. They were not. Did you have any transactions with Mr. McVicker? A. Yes.

Q. State what the transactions were with reference to Mr. Couch and Mr. Geers?

A. Several days after that first sale, I called on—I was notified by the office, after submitting these first checks, that the checks had been not honored by the bank. I was in Fontana at the time. When I got the message, I immediately went out

(Testimony of William B. Brooks.)

to the Ohlsons and from there I went to [125] McVickers. When I arrived at the McVickers' place, he had just completed a sale of all of his turkeys. He had sent two checks in to the company by letter, special delivery he told me. He had one check in his possession which he gave to me.

Q. Calling your attention to Plaintiff's Exhibits 3 and 4 for identification, and 5, can you identify those checks as the ones which were connected with this transaction?

A. If I could have a copy of my record there, I believe I would be in a position to identify these checks.

Q. Is this the document you want (indicating)?

A. Yes.

The Court: Is that a record you made yourself?

The Witness: Yes, that is a copy of the growing record.

The Court: Is it in your handwriting?

The Witness: Yes.

Q. (By Mr. Maury): Show it to me and then I will show it to opposing counsel.

A. All right.

Mr. Nimocks: Well, your Honor, I can't hear what the witness is saying. Will you instruct him to speak up?

Mr. Maury: Yes.

Q. Will you please speak up? All these gentlemen are supposed to hear what we are saying.

A. All right. As to checks Exhibit 3 and Exhibit 5, I have not seen them. Exhibit 4 is a check

(Testimony of William B. Brooks.)

handed me by Harry [126] McVicker at the time that I called on him.

Q. About the date it bears, August 13th?

A. 13th or 14th, I called on him.

Q. That was the one that he handed you?

A. Yes.

Q. That is Exhibit 4 for identification?

A. Yes.

Mr. Maury: We now offer that in evidence, your Honor.

The Court: It may be received.

The Clerk: Exhibit 4 in evidence.

(The document referred to was received in evidence and marked Plaintiff's Exhibit No. 4.)

The Court: How about Exhibit 4-A?

Mr. Maury: That is the exemplar of Couch's signature. We are not offering that.

Q. You have never seen 3 and 5? A. No.

Q. Did you personally transport Exhibit 4 to the office in Los Angeles?

A. No. I mailed it.

Q. You mailed it from Riverside?

A. Yes. Not from Riverside. I believe from Monrovia.

Q. But you mailed it in to the Los Angeles office of the Quaker Oats Company? A. Yes. [127]

The Court: May I ask a question?

Mr. Maury: Certainly.

The Court: You testified a moment ago you had gotten these checks and you sent them in to your

(Testimony of William B. Brooks.)

company, and you were out at Fontana then. That was several days later, I assume.

The Witness: Yes.

The Court: When you went over to see Mr. McVicker.

The Witness: Yes.

The Court: Did you go that same day?

The Witness: Yes.

The Court: You found out that Mr. McVicker had just completed the sale of his turkeys.

The Witness: That's right.

The Court: What do you mean by that? You mean on that particular day?

The Witness: My recollection is he had sold them two lots the day before and the last lot early that morning. When I came there, he was just returning from the scales with the check.

The Clerk: I notice the McVicker's check is dated August 13.

The Witness: Yes.

The Court: And also the other checks were dated August 13. According to your testimony, there was three or four days [128] difference between the time you took the first two checks and the McVicker check.

The Witness: Yes, that is true. This happened two or three years ago. I am trying to get my dates in order here.

The Court: May I see Exhibits 1 and 2, please? Here are Exhibits 1 and 2. You say you picked up those checks on or about the 13th day of August.

(Testimony of William B. Brooks.)

The Witness: I have that clear in my mind now. These checks were picked up at the same time these checks were picked up.

The Court: The McVickers' checks?

The Witness: Yes. The first that I heard of the Ohlson birds occurred several days before that. Those checks were sent in and those were the checks that I was advised by telephone by Mr. Woods of our office had not cleared the bank.

The Court: Are they Exhibits 1 and 2?

The Witness: No.

The Court: They are different checks?

The Witness: They are different checks, prior checks to this.

The Court: Do you know what happened to the prior checks?

The Witness: I understand, I have been told by our office that those checks were finally honored. I don't know.

The Court: In other words, there were two prior checks [129] given to Mr. Ohlson for turkeys.

The Witness: Yes.

The Court: Do you know how much prior?

The Witness: Possibly a week. I don't know exactly.

Q. (By Mr. Maury): Could it be McKibben, Carter and Lewis' Exhibit A?

A. Very well could be.

The Court: But the two prior checks were given to Mr. Ohlson and finally were paid and cleared the bank?

(Testimony of William B. Brooks.)

The Witness: I don't know. That is my understanding.

The Court: Your testimony is you went out to see Mr. Ohlson, picked up these two checks dated August 13th, and you went over to Mr. McVicker and you picked up his check which is Exhibit 5, dated August 12, is that the one?

The Witness: No. 4.

The Court: This is dated August 8.

The Witness: No. These are the ones that were supposed to have been sent in by special delivery mail by Mr. McVicker.

Mr. Nimocks: I can't hear the witness.

Mr. Maury: Speak up. He said these are the ones supposed to have been sent in by special delivery mail.

The Court: Then you didn't pick up any checks at McVicker's on the 13th?

The Witness: I picked up one check.

The Court: Which one is that? [130]

The Witness: Exhibit 4.

The Court: In the meantime, that check—let me see. Have I got that here? This Exhibit 4 you picked up from McVicker on the 13th and that is the same day you picked up the two Ohlson checks?

The Witness: That's right.

Q. (By Mr. Maury): Is that the first time you had ever picked up any checks at all of Geers or Couch? A. Yes.

Mr. Maury: May these checks be marked Plaintiff's Exhibits next in order?

(Testimony of William B. Brooks.)

The Court: They may be marked Plaintiff's Exhibits 14 and 15.

The Clerk: 14 and 15 for identification.

(The checks referred to were marked Plaintiff's Exhibits 13 and 14 for identification.)

Q. (By Mr. Maury): Calling your attention, Mr. Brooks, to Plaintiff's Exhibit 14 for identification, is that your signature at the lower left there? A. Yes.

Q. Was that executed in your presence by Mr. and Mrs. Ohlson? A. Yes, it was.

Q. Is the same true of Exhibit No. 15 for identification [131] with respect to the McVickers?

A. Yes, that was.

Mr. Maury: I think it has been stipulated that these are the chattel mortgages, your Honor, and I offer them in evidence.

The Court: They may be received in evidence.

The Clerk: Exhibits 14 and 15 in evidence.

(The documents referred to were received in evidence and marked Plaintiff's Exhibits 14 and 15.)

Mr. Maury: I think you may cross examine, counsel.

Cross Examination

Q. (By Mr. Nimocks): Do you know, Mr. Brooks, whether this particular check, Defendants McKibben, Carter and Lewis' Exhibit A, passed through your office or through your hands on the way to the home office?

A. Yes. That passed through my hands.

(Testimony of William B. Brooks.)

Q. At or about the date it bears, August 7?

A. Yes.

Q. Then how long was it before you went out and talked to the Ohlsons with regard to the check?

A. Approximately one week.

Q. I hand you Plaintiff's Exhibit No. 3, check given by Charley Geers to McVicker dated August 8, and Plaintiff's [132] Exhibit 5, signed by Charley Geers, dated August 12. I think that you said those were sent in by special delivery, is that correct?

A. That is what Mr. McVicker told me.

Q. He sent them in himself? A. Yes.

Q. You did not see those? A. No.

Q. But the other one did go through you?

A. The other came in my hands and I sent it in personally.

Q. But you waited a week before you went out and talked to Ohlson about not accepting any checks? A. No.

Q. Didn't you just testify it was about a week later?

A. No. At the time I received the first check, Exhibit A, from the Ohlsons, I told them not under any circumstances to sell any more birds to these people without getting express authority from the credit department in Los Angeles, and prior to selling any birds they should call this office collect and get permission.

Q. But you accepted this check and sent it in to the main office? A. Yes.

(Testimony of William B. Brooks.)

Q. On the 13th, had they already received the other [133] checks, Exhibit 1 and Exhibit 2, the one for \$600 and one for \$1,715.75?

A. That is true.

Mr. Nimocks: I have no further questions of the witness, your Honor.

Mr. Geers: May I ask a question?

Mr. Maury: Surely.

Cross Examination

Q. (By Mr. Geers): When you went out to see Ohlson regarding those checks, the one for \$600 and the other one the same day, \$1,715.75, when you went out and talked to him on these two, what conversation did you have with him, do you remember?

A. Yes. At the time that I called on him in regard to these checks, I had already received word that the first check, Exhibit A, had been returned from the bank. When I arrived there, he had sold the balance of that age group of turkeys and he held Exhibit 2 and Exhibit 1, which he turned over to me.

Q. Do you know the difference?

A. Yes, I do.

Q. What explanation do you have of that difference?

A. The check No. 1, Exhibit 1, was made out to C. W. Ohlson, and Exhibit No. 2 is made out to C. W. Ohlson and the [134] Quaker Oats Company.

Q. Did you question that?

A. Yes, I did. Mr. Ohlson told me that he had

(Testimony of William B. Brooks.)

requested Mr. Geers to make out a check to him personally in the sum of \$600, and that he intended to request permission from me or from the credit department of Quaker Oats Company to keep that \$600. The requirements in our contract with the growers call for checks to be made out jointly to the grower and the Quaker Oats Company.

Q. Had he ever grown for you before?

A. Yes, the prior year.

Q. He obtained permission, express permission from you to sell these turkeys the year before, is that right?

A. I don't remember at the time who he sold the turkeys to the year before.

Mr. Maury: Speak up a little bit, please.

The Witness: I don't remember who Mr. Ohlson sold his turkeys to in 1951.

The Court: But you never did give him written authority, but only oral.

The Witness: I have never given anybody written authority. That is the province of the credit department.

Q. (By Mr. Geers): What day were you out there to his place to pick those checks up?

A. It was either the 13th or 14th. I am not sure [135] which.

Q. If it was the 13th, was that the same day that we got the turkeys, we bought the turkeys that morning? By morning I mean from midnight on. Or did he say?

A. I don't remember.

(Testimony of William B. Brooks.)

Q. We bought the turkeys—well, I am out of line on that.

A. It is two years ago. I don't remember.

Q. Could those turkeys have been bought on the 12th? I will put it that way.

A. They could have. I am not sure.

Mr. Geers: That's all. Thank you.

The Court: Any other questions?

Cross Examination

Q. (By Mr. Nimocks): Do you know whether there were in these lots any 11-13, grade B hen turkeys? A. I don't know.

Mr. Nimocks: That's all.

Mr. Maury: Does your Honor have any questions?

The Court: No.

Mr. Maury: That's all.

The Court: May this witness be excused?

Mr. Maury: I think so. [136]

The Court: You may be excused.

(Witness excused.)

The Court: We will now recess until 10:00 o'clock tomorrow.

(Recess.) [137]

Los Angeles, Feb. 25, 1954, 10:00 o'clock a.m.

The Clerk: No. 14690-HW Civil, the Quaker Oats Company vs. John J. Couch, et al., further trial.

The Court: You may proceed.

Mr. Maury: I wish now to call Mr. Wesley Eugene McKibben, one of the defendants in this action, your Honor.

WESLEY EUGENE McKIBBEN

called as a witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Wesley Eugene McKibben.

Direct Examination

Q. (By Mr. Maury): What is your occupation, Mr. McKibben?

A. I am a poultry processor.

Q. Whereabouts do you engage in that work?

A. Downey, California.

Q. Is that in this county? A. Yes, it is.

Q. Are you associated with Mr. Carter in that work? A. I am. [138]

Q. That is a partnership?

A. A partnership.

Q. Under what name do you and he do business?

A. We operate under Downey Rabbit & Poultry Company, Downey Poultry Buyers Company, and Country Poultry Market.

Q. Three separate names? A. Yes.

Q. Are there any differences in the work, or are those just trade names?

A. Those are trade names we use in our operations.

(Testimony of Wesley Eugene McKibben.)

tion with John Couch at the time. We had started to write an invoice. Our purchase was from John Couch, and he called us on the telephone and said to make the check payable to Charley Geers.

Q. And you did so? A. We did so. [141]

Q. And Plaintiff's Exhibit 6 is the check?

A. That's right.

Q. Was that a fair and reasonable market price for the birds at that time, sir?

A. I believe so.

Q. You are in the business, are you not?

A. Yes, I am.

Q. If you overpay the market price, what would be the effect on your business?

A. It depends on the transaction.

Q. Of course, but as a general thing, isn't it true you have to know the market price pretty accurately? A. That's right.

Q. The market price is usually a fair and reasonable market price? A. That's right.

Q. That is what you pay, is it not?

A. Yes, sir.

Q. I now call your attention to two checks which your counsel has handed me. They are numbered respectively 26076 and 26077. They are both dated August 6, 1952. I observe an invoice and a weight slip, also. Do these match up as parts of one transaction? A. They do.

Q. What transaction do they evidence? [142]

A. Evidence that we purchased some 600 head of turkeys, hen turkeys, by size, 9,350 pounds at 31

(Testimony of Wesley Eugene McKibben.)

cents a pound, total, \$2,898.50, which was paid in two checks.

Q. One for \$710 and one for \$2,188.50, is that right? A. That's right.

Mr. Maury: May these checks and invoices be marked as one exhibit, and I offer them in evidence, your Honor.

The Court: They may be received and marked Plaintiff's Exhibit 17 in evidence.

The Clerk: Exhibit 17 in evidence.

(The documents referred to were received in evidence and marked Plaintiff's Exhibit No. 17.)

Q. (By Mr. Maury): Can you give any reason why there were two checks issued?

A. On the directions of the seller.

The Court: Who was the seller in this case?

Mr. Maury: Couch.

The Court: Couch?

The Witness: Mr. John Couch.

Q. (By Mr. Maury): Calling your attention now to two checks numbered 26122 and 26123, and to an invoice, all three of which documents are dated August 12, 1952, are those evidence of another transaction? A. They are. [143]

Q. There is also a weight slip attached to the invoice? A. That's right.

Q. What was that transaction?

A. We purchased 210 tom turkeys, 5,390 pounds net, for \$1,563.10, at a price of 29 cents a pound.

Q. And there were two checks given again?

(Testimony of Wesley Eugene McKibben.)

A. That's right.

Q. That was also on the direction of the seller?

A. That's right.

Q. I observe that these checks are made to John Couch.

A. That's right.

Q. I observe that one of them is endorsed by John Couch only, and the other one apparently is endorsed by John Couch and Charley Geers.

A. That's right.

Mr. Maury: We offer these in evidence, your Honor, as Plaintiff's Exhibit 18.

The Court: They may be received as Plaintiff's Exhibit No. 18.

The Clerk: Plaintiff's Exhibit 18.

(The documents referred to were received in evidence and marked as Plaintiff's Exhibit No. 18.)

Q. (By Mr. Maury): Calling your attention now to an additional check, No. 26132, and to an invoice, one of which is dated August 12 [144] and the other of which is dated August 13, 1952, are those part of one transaction, the invoice having another weight certificate?

A. Yes. There is a date on the weight slip of 8-13, and an apparent mistake on the invoice, being 8-12. The bookkeeper had written that date.

Q. It probably would be on the 13th of August?

A. That's right.

Q. This yellow sheet attached hereto is just a duplicate?

(Testimony of Wesley Eugene McKibben.)

A. Just a duplicate or carbon of the weight sheet.

Q. And these documents evidence what transaction?

A. We purchased 310 young tom turkeys, 8,670 pounds, price 29 cents a pound, \$2,514.30.

Q. And the check is in payment thereof?

A. That's right.

Mr. Maury: We offer this as the plaintiff's next in order.

The Court: It may be received as Plaintiff's Exhibit No. 19.

The Clerk: Plaintiff's Exhibit 19.

(The documents referred to were received in evidence and marked as Plaintiff's Exhibit No. 19.)

Q. (By Mr. Maury): Do you have any personal recollection of these transactions [145] or any of them?

A. Only that these turkeys were offered to us by John Couch.

Q. And you bought them?

A. We bought them.

Q. Do you know where Mr. Couch resided at that time?

A. In Riverside.

Q. Did you check any records in Riverside to determine whether there were any mortgages on these birds?

A. No, I didn't, sir. It is not customary.

Q. Did you ask Mr. Couch whether the title was clear and unencumbered?

A. No, I didn't.

(Testimony of Wesley Eugene McKibben.)

The Court: May I ask this witness a question?

Mr. Maury: Certainly, your Honor.

The Court: Do you keep any record as to where these turkeys originate from?

The Witness: Where they originate from?

The Court: Yes. Couch came down with a bunch of turkeys and he offered them to you for sale.

The Witness: Yes, sir.

The Court: Do you know where they came from? San Diego County, Riverside County, San Bernardino County, Ventura County?

The Witness: We don't signify an individual purchase [146] as to what county it might come out of.

The Court: Have you any record to show where these turkeys came from?

The Witness: None other than our purchase record and our knowledge of the transaction.

The Court: Your Exhibit 19 says 310 young tom turkeys.

The Witness: Yes, sir.

The Court: So do you know where those turkeys came from?

The Witness: From John Couch.

The Court: Do you know where he got them?

The Witness: No, sir.

The Court: Is that true in all your invoices?

The Witness: That is true of all of them, yes.

The Court: You never asked John Couch where the turkeys came from?

The Witness: The only conversation I had with

(Testimony of Wesley Eugene McKibben.)

John Couch was at the particular time I bought some deliveries, he had birds that were supposed to be near the weights we needed for our requirements, and from a faint recollection they were supposed to be some toms out of Lancaster area. Other than that, there was no discussion of what town they were coming from, what grower, what milling company they were coming from.

The Court: How long had you dealt with John Couch before [147] August 1952?

The Witness: Off and on for, I think, four years.

The Court: Do you know of your own knowledge where he purchased his turkeys during that four years period of time?

The Witness: He operated throughout Southern California.

The Court: He bought them everywhere?

The Witness: Everywhere throughout Southern California, turkeys and poultry.

The Court: Do you know that of your own knowledge?

The Witness: I know that of my own knowledge, yes.

Q. (By Mr. Maury): After you received a delivery of these turkeys, as to each transaction, what did you do with the turkeys?

A. They were processed, slaughtered.

Q. Picked?

A. Cleaned, eviscerated, packed and sent to a freezer, and sold. I don't know the particular sale involved, but in all probability we had the birds

(Testimony of Wesley Eugene McKibben.)

pretty well spoken for or sold before we bought them. That is our procedure in operation.

Q. Then would you say that they were gone from your possession and control within 30 days after they were purchased by you?

A. Were they out of my control? Not necessarily. They [148] could have been warehoused at Home Ice & Storage. We have cumulative inventory we build up during the early season. We may have commitments to buy from markets or meat sale companies, various people we process for, to buy certain tonnage in the holiday period.

Q. You would say, however, they were entirely slaughtered and made ready for market?

A. They were in public storage, yes.

Q. They were in public storage within 30 days after the date on which you took delivery?

A. Yes. They had to be. Once we dress the product, it is immediately sent to a freezer to be frozen.

Q. You can't keep live poultry, you have to dress it right away?

A. You can hold it a few days, but common procedure is that the turkeys are dressed then.

Q. Did Mr. Couch or Mr. Geers ever tell you that he had made the checks with which he got delivery of this poultry payable jointly to Quaker Oats and the grower?

A. I don't believe he did, sir. It is normal procedure that they do. It is a practice in the trade.

Q. You know it is practice in the trade, but you

(Testimony of Wesley Eugene McKibben.)

didn't ask him on these particular occasions, did you? A. No, sir.

Q. In fact, you didn't discuss any lien on the birds at [149] all, did you? A. No, sir.

Q. Or any mode of payment by Mr. Couch or Mr. Geers for their receipt of the birds?

A. No, I don't believe we discussed it.

Mr. Maury: That will be all. You may examine the witness now or later.

Mr. Nimocks: I would like to ask a couple of questions now.

Mr. Maury: All right.

Cross Examination

Q. (By Mr. Nimocks): You said you had been dealing with John Couch for some four years, is that correct?

A. I believe four years, off and on for four years.

Q. Have there been any occasions where you had difficulty with turkeys he had sold you before?

A. None whatsoever.

Mr. Maury: To which we object, your Honor, calling for evidence outside of the transactions involved here with reference to a man's reputation.

The Court: Do you think there is any question here about this witness being a purchaser for value without any notice?

Mr. Maury: Any actual notice, your Honor, there is no [150] question. It is constructive notice.

The Court: Assuming there is constructive no-

(Testimony of Wesley Eugene McKibben.)

tice, counsel argued yesterday, if I remember correctly, I think you argued yesterday, that inasmuch as the sellers had had some difficulty with the checks, that should have been notice.

Mr. Maury: Notice to whom, your Honor?

The Court: You were talking about the buying of the turkeys, the first two checks that were given. They were finally cleared, but there was some difficulty with them. They were turned down.

Mr. Maury: That wouldn't be notice to this gentleman.

The Court: No, but that witness was allowed to testify.

Mr. Maury: Oh, very well.

The Court: Objection overruled.

Mr. Maury: It is a side matter. It doesn't really matter.

The Court: The objection is overruled. What was the answer?

(Answer read by the reporter.)

Q. (By Mr. Nimocks): Have you or your concern personally dealt with growers in regard to mortgaged turkeys? A. We have.

Q. As to Quaker Oats? A. We have.

Q. Was that before this time? [151]

A. Before this time.

Q. Have you done it since this time?

A. Since this time.

Q. Did anybody from Quaker Oats notify you, give you written consent to purchase those turkeys?

A. We have never had written consent to buy

(Testimony of Wesley Eugene McKibben.)

any turkeys since I have been in business, never.

Q. When was the latest instance in which you bought any turkeys from Quaker Oats?

A. In November this year.

The Court: From Quaker Oats?

The Witness: I bought from the farmer and Quaker Oats held a chattel on the property.

Q. (By Mr. Nimocks): Well, how did you make that pickup?

A. Our dealings were direct with the farmer. We received authorization to buy them verbally from the field man.

Q. In buying these turkeys, Mr. McKibben, approximately how much time elapses from the time of purchase and the time of slaughter?

A. Normal procedure in our operation is that they would be slaughtered either that same day on arrival at our plant or the following day.

Q. Do you ever wait for a time before you slaughter them? [152]

A. We have had occasion to feed turkeys where we couldn't get them all dressed, they were coming faster than we could dress them.

Q. But that is not the normal procedure?

A. No, sir.

The Court: That wouldn't be necessary in August?

The Witness: No. Our turkeys come in pretty heavy through that time of the year, though, and this particular year they were coming heavy in August.

(Testimony of Wesley Eugene McKibben.)

The Court: In August?

The Witness: In August. Production was far ahead of schedule.

Mr. Nimocks: That's all.

The Court: May I ask a question of the witness?

Mr. Nimocks: Certainly.

The Court: How long have you been connected with the turkey and poultry business?

The Witness: 1947.

The Court: That is about six years?

The Witness: Yes. Seven years, February 3.

The Court: Has your connection only been in the buying and the processing of the turkeys?

The Witness: At one time we raised and processed our own commodities.

The Court: Do you know anything about the practice of [153] the feed companies furnishing feed to turkey growers and taking a chattel mortgage on the turkeys?

The Witness: I am aware that they do that, yes, sir.

The Court: Is that a custom in this district?

The Witness: It is a custom in—well, it is a custom in the turkey industry that the feed companies will provide feed, holding the chattel on the commodity.

The Court: According to the evidence introduced in this case so far, the feed company sold or there was sold to the farmer a certain number of poults, 1,000 poults.

The Witness: Yes.

(Testimony of Wesley Eugene McKibben.)

The Court: The farmer was to raise those poult and the farmer gave a mortgage back to the feed company, Quaker Oats Company, to protect them for the purchase price of the poult and for the feed that was used.

The Witness: Yes, sir.

The Court: Is that a customary procedure as far as you know in this locality?

The Witness: It is. I can explain it, if you like.

The Court: I wish you would, if you can.

The Witness: Many of the feed companies will make a tie-up with a hatchery to supply the poult to the farmer. They immediately will pay the hatchery for the poult. They put them on the ranch and then in turn will furnish the feed for that poultry to market time, and in turn they take a chattel [154] on the property until it is sold or paid for.

The Court: Which is recorded?

The Witness: Which is recorded. The knowledge of these recordings or the responsibility of a knowledge in these things is left to the individual buying the commodity in first sale. In other words, we buy product from——

The Court: Wait a minute. Let's go back. I don't understand what you have said.

The Witness: We will take John Couch as an example. He is the buyer of the commodity. So it has been the practice in the trade that whoever bought it should make the check payable jointly to the milling company and to the grower, and you

(Testimony of Wesley Eugene McKibben.)

usually would ask the grower, "Are these turkeys chattel mortgaged?" If he refused to answer, you don't buy them, or you take time to check and see who holds the chattel. The buyer who buys the commodity at that time, the responsibility will usually lay in the hands of the buyer.

Our contacts with the grower would be similar. If we were to make first purchase of the turkeys, we would have responsibility of seeing that the feed company is paid.

The Court: What do you know about the right or the permission given the grower to sell the turkeys?

The Witness: It has always been verbal. The field representative, such as this man that testified yesterday, would contact me as the processor, or Mr. Couch or any of the haulers [155] that buy livestock in the country, operate trucks in the country, tell them here is a particular flock of turkeys to sell, go to work on them. If you establish a satisfactory price or if that individual establishes a satisfactory price with the farmer, they would buy them and haul them to a person processing the commodity. Our business is primarily processing.

The Court: I know what your business is. The hauler goes up to a ranch to buy turkeys. What authority has the grower to sell those turkeys?

The Witness: Verbal from the field man.

The Court: Have you ever seen a written authorization?

The Witness: No, sir.

(Testimony of Wesley Eugene McKibben.)

The Court: Have you ever received a written authorization?

The Witness: I have never received a written authorization, and I have bought lots of turkeys. The only instance of a written authorization was in this last year, a purchase where the commodity was not going to be paid for at the time we picked it up. You can verify this with General Mills. We were storing the commodity for the grower and they gave us directions on how the turkeys would be stored and in whose name they would be stored and retained. Other than that we have never received written authorization.

The Court: When you bought turkeys and paid for them, you never did get a written authorization from the company [156] furnishing the feed?

The Witness: No, sir, and I bought lots of Quaker Oats turkeys through another hauler.

The Court: You bought Quaker Oats turkeys?

The Witness: Yes, sir.

The Court: Did you receive any written authorization?

The Witness: No, sir.

The Court: Did you have any problem with any other hauler than Couch?

The Witness: I have never had any trouble with any hauler other than John Couch.

The Court: All right.

Redirect Examination

Q. (By Mr. Maury): Do you know whether Mr.

(Testimony of Wesley Eugene McKibben.)

Couch or Mr. Geers, either of them, had a license from the State of California to operate as haulers?

A. Do I know whether they did at the particular time of this incident?

Q. That's right.

Mr. Nimocks: Just a moment. I am going to object to that question. You mean licensed as haulers or buyers?

Mr. Maury: Buyers of poultry.

Mr. Nimocks: I don't see that that is material in Mr. [157] McKibben's case. That would be material to the grower.

The Court: What difference does it make?

Mr. Maury: I just want to know what he knew about Couch and Geers.

The Court: I will overrule the objection. We haven't any jury here. I am trying to find out all the facts relative to this case, if I can.

The Witness: To my knowledge, they were operating as licensed buyers.

Q. (By Mr. Maury): That was your understanding?

A. That was my understanding, that they were licensed buyers.

Q. In the course of your dealings with growers, purchasers of turkeys, and so forth, did any of your checks ever bounce?

A. Did any of my checks ever bounce?

Mr. Nimocks: That is immaterial.

The Court: Overruled.

The Witness: My checks have never bounced.

(Testimony of Wesley Eugene McKibben.)

Q. (By Mr. Maury): Your credit is good, is it, Mr. McKibben?

A. It is. The only instance we have had is where there was a failure to have two signatures on the checks, but so far as my checks bouncing, insufficient funds, my checks have never bounced. [158]

Q. You have a high credit rating, do you not?

A. I do, sir.

Q. Do you know whether or not the Quaker Oats Company has a list of approved buyers it hands to its growers?

A. Do I know?

Q. Yes.

A. They wouldn't furnish us one this year.

Q. Let's put it back in 1952. Do you know whether or not you were personally on an approved buyers list with Quaker Oats?

A. I believe I was.

Q. And how about 1953?

A. In 1953?

Q. Yes.

A. Quaker Oats wouldn't provide us on request, they wouldn't give authorization to buy turkeys this year.

Q. Then Quaker does grant or withhold authorization to certain buyers?

A. No, that isn't correct. The Quaker Oats said there was a law suit pending on a 1952 sale of turkeys, and they told a grower that they would rather he didn't do business with us this year after he had completed the sale to us.

Q. But Quaker then does tell the grower whether

(Testimony of Wesley Eugene McKibben.)

to sell to certain processors or not, or purchasers, let us say?

A. Only in this instance that I know of. [159]

Q. You don't know whether or not Quaker maintains a list of purchasers whose credit is good, do you?

A. Well, I would think their credit department would.

Q. You would not think Quaker would grant growers permission to sell chattel mortgage property to purchasers whose credit was no good, would you?

A. They have.

Q. Not on credit.

A. Not on credit, but on the acceptance of a check.

Q. If the check cleared.

A. Well, they have given the verbal authorization to pick up the commodity and take it to market, their field man has, Howard Lindsay has. Many of their field men have.

Q. You personally have no recollection of these transactions, is that right?

A. Other than the fact that John Couch said these turkeys were coming from Lancaster, I have not.

Q. He told you they were coming from Lancaster?

A. Yes. We had a load of fryers that came in about the same time, I think, from Lancaster.

The Court: When you say from Lancaster, what invoice are you referring to, do you know?

(Testimony of Wesley Eugene McKibben.)

The Witness: It would be the latest of the invoices where we purchased toms.

The Court: Let's have the invoices. Can you designate [160] the ones he said were coming from Lancaster?

The Witness: When we are in the market for a particular commodity, many times we will contact a hauler or trucker we know, a poultry buyer, and ask them if they have a commodity in that weight or size to sell us. Well, it would appear to be this item 18 and item 19.

The Court: Those two items?

The Witness: Yes, sir.

The Court: To the best of your recollection, John Couch told you those two items came from Lancaster?

The Witness: Yes, sir.

Q. (By Mr. Maury): How about the transactions evidenced by Exhibits 16 and 17?

A. There was no discussion as to where they came from.

Q. There was no discussion. In each of these instances, all these transactions, were the prices which were paid by you the fair and reasonable market value of the turkeys?

A. They were prices that I established that I would pay. I am a businessman and I try and buy for whatever I feel I can buy for. If the market quotation, for an example, we have a government report that reports the live market at certain values,

(Testimony of Wesley Eugene McKibben.)

and I may try to buy at less or more, depending on my needs.

Q. Is this the government report to which you refer (indicating)? [161] A. Yes, sir.

Q. What is the name of that?

A. That is Market Service News, Federal-State Market News.

Q. Do you rely on that in the trade as an accurate report of market prices for turkeys?

A. Reasonably accurate. It is a report that they compile from calling various poultry houses as to what they are paying.

Q. Do they publish that all year around?

A. Daily publication, five days a week.

Q. Isn't it true there are no quotations for turkeys during the month of August?

A. No, sir, I don't think so.

Q. This is dated September 4, 1952.

A. No, there is a quotation. This is September.

Q. Yes.

A. Well, I don't know. I haven't seen the August market. If you give me the August sheet, I would know.

Mr. Maury: I ask that this be marked for identification.

The Court: It may be marked Plaintiff's Exhibit 20 for identification.

The Clerk: Plaintiff's Exhibit 20 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 20 for identification.)

(Testimony of Wesley Eugene McKibben.)

The Court: I want to ask this witness another question.

The Witness: All right, sir.

The Court: You have here four invoices during the month of August. Are these the only four purchases you made from John Couch or Geers during this period?

The Witness: During the month of August? Are those the only four I have made?

The Court: Yes.

The Witness: I can get my books and check.

The Court: Will you check your books and see if you made any more sales?

The Witness: Purchases, you mean?

The Court: Of either Couch or Geers. I mean purchases, yes.

The Witness: Could I have the invoices?

The Court: Yes.

Mr. Nimocks: Your Honor, what time did you have in mind? Around the dates of the checks?

The Court: During the month of August, early part of August, in there.

The Witness: Apparently that is all I made.

The Court: Just these four sales?

The Witness: Yes, sir.

The Court: Mr. Maury, Exhibit 16 is connected up with Exhibit 6. I think, so far as the testimony is concerned, [163] there is no question that the turkeys that were purchased with Exhibit 6 were turkeys that came from one of these growers. Exhibit 17. The checks are dated August 6. Well, now,

(Testimony of Wesley Eugene McKibben.)

that is before, according to the testimony so far, any contact was made with these growers. The testimony was about August 13th. Your field representative testified it was about August 13th. So Exhibit 17 was for turkeys evidently purchased from somebody before any contact was made with the growers.

Remember I asked Mr. Brooks yesterday very specifically as to the date August 13th. He changed his testimony, you remember, because he testified he had seen one grower first and then he had been down, I believe, to Fontana somewhere and got notice the checks were bad, and he went up and saw the second grower, and then he decided he was wrong, he picked up the two checks at the same time. He was sure it was the 13th or thereabouts. We have got these two checks dated August 6.

Mr. Maury: We have got these two checks dated August 7th and 8th respectively.

The Court: What are you going to do with the testimony of Mr. Brooks? He was very positive as to the 13th.

Mr. Maury: That was the day he first picked up a check from Mr. McVicker.

The Witness: The first checks were mailed.

The Court: You mustn't join in this argument.

The Witness: I'm sorry.

Mr. Maury: The first two checks, as I understand Mr. Brooks' testimony, were mailed in by the grower, and he picked up the third from Mr.

(Testimony of Wesley Eugene McKibben.)

McVicker. The Ohlson checks are dated August 7th and 8th respectively.

The Court: Would you say that these two checks in Exhibit 17 are the first two checks?

Mr. Maury: Well, I prefer to get all the evidence in.

The Court: If you do, the testimony is the first two checks have been cleared.

Mr. Maury: The checks you have in your hand are this man's checks.

The Court: That's right, for the turkeys.

Mr. Maury: That's right.

The Court: If these two checks connect up with the first two checks that Geers gave, those two checks have been cleared and these turkeys have been paid for.

Mr. Maury: Just one of Geers' checks ever cleared.

The Court: We don't have the checks that cleared. The testimony of Mr. Brooks was that Geers had given two checks and he was over here in Fontana and he found out about these two checks that had not cleared and came back, but he said eventually the two checks were cleared, there was some trouble, but they eventually cleared.

Mr. Maury: Whether he knew or not is a question. We have [165] all the checks here.

The Court: I am calling your attention to this so if you want to ask this witness to clarify the matter in any way, you can.

Mr. Maury: I can't ask him to clarify what hap-

(Testimony of Wesley Eugene McKibben.)

pened when he wasn't there. All I can do is put the facts before the court and then argue the matter to the best of my ability.

The Court: Here is the situation. Let's assume, without admitting, let's assume I would render a judgment in favor of the plaintiff here against this defendant. I can't render a judgment against this defendant unless you can establish he got the turkeys.

Mr. Maury: Yes, that's true.

The Court: The fact that Couch sold him some turkeys doesn't mean that the turkeys came from these two ranches.

Mr. Maury: That is true.

The Court: So you have got to establish the turkeys came from the two ranches, the turkeys that this defendant bought.

Mr. Maury: I know that difficulty.

The Court: I am trying to tie up the turkeys.

Mr. Maury: Mr. Geers has testified each of these loads of turkeys he got from the Ohlson and McVicker ranches went to Los Angeles with perhaps a few additions or subtractions, that he went directly in and they were sold for these checks.

The Court: My understanding of Mr. Geers' testimony is [166] that he only made one delivery, brought the turkeys into town, turned the truck over to Couch, and he doesn't know what happened to the turkeys after that.

Mr. Maury: He said they all went to these processors.

(Testimony of Wesley Eugene McKibben.)

The Court: Well, these are the only two processors they dealt with during this period.

Mr. Maury: We will get to that when the case is all in.

The Court: If I find in favor of the plaintiff, I have got to allocate the turkeys between this processor and the other processor.

Mr. Maury: There is a question, too, whether you do or not. These are questions of law.

The Court: I am just calling your attention to the fact that we have got a couple of checks dated August 6th that haven't been tied up as far as I am able to ascertain yet. Don't let me get you off the track.

Mr. Maury: That's all right, your Honor. I appreciate your suggestions very much. I know sometimes these things present tortuous question.

Q. You remember your deposition being taken in my office on the 31st of October, don't you, Mr. McKibben? A. Yes, sir.

Q. I will hand you my copy——

The Clerk: The deposition has never been filed in the clerk's office. [167]

Mr. Maury: Counsel, has the deposition——

Mr. Nimocks: I was late in returning them.

The Court: You don't deny the deposition was taken? You have no objection to reading the questions and answers to the witness?

Mr. Nimocks: No.

The Court: All right. Read the questions and answers.

(Testimony of Wesley Eugene McKibben.)

Q. (By Mr. Maury): Calling your attention to page 6 of my copy of the deposition, do you remember my asking you:

“Q. Reading from this record which your attorney has handed me, then, it appears that on August 6, 1952, a purchase was made and you gave a check for \$710.00. On the same date another purchase was made and you gave a check for \$2,-188.50.” A. That’s right.

Q. I asked you, “Now, do you remember that transaction at all?” And did you answer then:

“A. Not to identify it as a particular transaction.”

A. Yes, sir. You know my reason.

Q. Do you remember my asking you the following question:

“Q. Do you remember what member of your force, or of your business personnel, talked with either Couch or Geers at that time?” [168]

A. I answered, “Myself.”

Q. That’s right. Then I asked you, “You talked with him?”

You answered, “Yes.”

A. That’s right.

Q. I asked you, “Do you remember the conversation at all?”

“A. No, I couldn’t say that I remember it. Let me look at it.

“Q. Of course.”

Then I handed the document to you. That is the

(Testimony of Wesley Eugene McKibben.)

document which your counsel has supplied, listing those checks.

A. Only the checks. I did not have the invoices at the time.

Q. Then you answered:

"A. I wouldn't remember anything particular about the transaction without seeing our invoices of purchase, or something on it. I can't honestly say that I remember anything significant about the transaction, except that I bought some turkeys from them."

A. That's right, sir.

"Q. How often had you bought turkeys from Mr. Couch?

"A. I wouldn't know that exactly without [169] examining our records.

"Q. Throughout the year 1952 you had made a number of purchases from Mr. Couch; is that right?

"A. That's right.

"Q. Do you know where his business was located?

"A. I have a Riverside phone number.

"Q. Do you know what that phone number was?

"A. I think the residence number was 9859, Riverside.

"Q. Do you know what his business address in Riverside was? "A. No.

"Q. Do you know what name he did business under? "A. No.

"Q. Did you ever hear of the Park Avenue Poultry Company?

(Testimony of Wesley Eugene McKibben.)

A. After this incident of talking to me on the telephone, some time later in the year I had recognition of the Park Avenue Poultry as an association with John Couch.” A. That’s right.

“Q. But not before the month of August? [170]

“A. Not prior.”

A. That’s right.

Q. On line 17, page 8:

“Q. Do you have any recollection of any one of the transactions as distinguished from any others?”

Then Mr. Nimocks interposed, “You are referring to these (indicating)?” And he indicated a list of checks which he had given me.

A. That’s right.

Q. I said, “Yes,” and you answered:

“Not from the listing that we have here, no.

“Q. Can you tell from those listings how many pounds of turkey you purchased on each of those occasions? “A. No, sir.”

Do you remember my asking you on page 9 at line 15:

“Q. Isn’t it true that those invoices were required in the State court in Riverside?

“A. The only thing that was required was my testimony in the State court in Riverside.”

Do you remember at page 11, line 1, being asked:

“Q. Do you have any recollection one way or the other whether you put them into the hands of the District Attorney in Riverside? [171]

“A. I don’t think I did. I think all they took

(Testimony of Wesley Eugene McKibben.)

was my testimony up there. As I remember, we waited six days to testify. I got on the witness stand and was asked if I ever got poultry from Couch and Geers and I said yes. They said, 'During the month of August did you purchase poultry?' I think I said yes, or at least my answer would have been yes. That was about it."

Do you remember being asked that question and giving that answer?

A. Yes. May I say something, sir?

The Court: No, sir, you can't volunteer any information.

Q. (By Mr. Maury): Calling your attention to Plaintiff's Exhibit 16, your invoice dated August 8, Exhibit 17, Exhibit 18, Exhibit 19, can you tell us now which transaction was the one with reference—strike that—as to which of those exhibits did Couch say he got the turkeys from Lancaster?

A. Exhibits 18 and 19.

Q. Exhibits 18 and 19?

A. In a phone conversation only.

Q. In a phone conversation only. Those are the ones dated August 12 and 13, 1952.

A. I didn't have these invoices at the time my deposition was taken, you know. [172]

Q. Just why did you volunteer that statement?

A. Because you tried to prove significance as to the transactions, and all I saw was the check record at the time my deposition was taken.

Q. You had no recollection, then, as to any in-

(Testimony of Wesley Eugene McKibben.)

voice whatsoever last October. What has refreshed your memory?

A. The fact that I am looking at the particular invoices.

Q. You had your check record there at the time?

A. Only a list of the checks that were written and the dates.

Q. Did you sign any of these checks?

A. No, sir.

Q. Are these invoices in your handwriting?

A. They are, sir. This is my handwriting and this is.

Q. 19 and 18.

A. And this is my handwriting.

Q. 17.

A. And this particular invoice is written by my bookkeeper.

Q. Where did Mr. Couch telephone you from, if you know, with respect to Exhibits 18 and 19?

A. From Riverside, sir.

Q. He did?

A. I would presume it was from Riverside.

Q. What did he say in that phone conversation?

A. There was a discussion of buying a particular weight turkey that we needed. I was asked if I could use a particular weight turkey. In dealing with poultry, and especially turkeys, we have a customer demand for dressed weight commodity, and we establish a live weight that we have to have to fill those requirements, and he made reference that he had them, he had turkeys to sell.

(Testimony of Wesley Eugene McKibben.)

Q. He just said he had turkeys to sell. What else was said?

A. I couldn't go into all the fineness of the conversation.

Q. Did you call him or did he call you?

A. I am not sure whether I called him or he called me.

Q. You were the ones that were looking for this particular type?

A. Yes. I would suppose I called him.

Q. Have you given us all that conversation?

A. To the best of my knowledge, I have, sir, that we needed toms and that he had toms to sell. He was referring to these as Antelope Valley. They say Antelope Valley, toms.

Q. Where does it say that?

A. The conversation was John had some toms in Antelope Valley, and that is Lancaster.

Q. Later on turkeys came in? [174]

A. Yes.

Q. And he never said to you, "These particular turkeys I am selling you came from Antelope Valley"?

A. No, sir, he never did.

Q. Do you know who delivered them at your place?

A. John Couch.

Q. Personally?

A. Yes.

The Court: All the turkeys?

The Witness: No, not all the turkeys. There was one load of turkeys where the check was made payable to Charley Geers.

The Court: That is Exhibit 16?

(Testimony of Wesley Eugene McKibben.)

The Witness: Yes. 17, John Couch brought in, 18, John Couch brought in, and 19, John Couch brought in. But Exhibit 16, Charley Geers brought to my plant. There was a phone conversation and I got directions to make the check payable to Charley Geers.

Mr. Maury: You may examine, counsel.

Recross Examination

Q. (By Mr. Nimocks): You testified, Mr. McKibben that at the time of your deposition, you did not have the invoices, is that correct?

A. I did not have them. [175]

Q. Where were they at that time?

A. We didn't know where they were. We had remodeled our building. We thought they were lost or destroyed. Mr. Maury asked me to make every effort I could to find the invoices, which we did.

Q. When did you find them?

A. Three days before the trial.

Mr. Nimocks: No further questions.

The Witness: After going through all our boxes.

The Court: You may step down.

(Witness excused.)

The Court: I notice it's 11:00 o'clock. We will take our morning recess. We will recess now until 10 minutes after 11:00.

(Recess.)

The Court: You may proceed.

Mr. Maury: I will call Mr. Lewis. [176]

ORVILLE ROBERT LEWIS

called as a witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name?

The Witness: Orville Robert Lewis.

Direct Examination

Q. (By Mr. Maury): What is your occupation, Mr. Lewis?

A. Retail poultry operator, store.

Q. Do you do business under the name of Thrifty Poultry Company? A. I do.

Q. And that is where?

A. It is 8907 Atlantic Boulevard in the city of South Gate.

Q. That is in Los Angeles County, California?

A. Right.

Q. Calling your attention to the month of August 1952, did you purchase any turkeys from John Couch or Charley Geers? A. I did.

Q. Your counsel has handed me your cancelled check and invoice, which I hand to you. Is that your cancelled check and your invoice kept in the regular course of business? [177]

A. This is. Do you want to know if this is all there is? I found out we have another one. That is one of the two invoices.

Q. You have another?

A. At the store.

Q. What is the date at the store?

A. August 3.

(Testimony of Orville Robert Lewis.)

Mr. Maury: May this be marked at this time?

The Court: It may be received in evidence as Plaintiff's Exhibit 21.

The Clerk: 21 in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 21.)

The Court: You say the second invoice is dated when?

The Witness: August 3.

Q. (By Mr. Maury): Calling your attention to Plaintiff's Exhibit 21 in evidence, can you explain how many turkeys that evidences the purchase of?

A. This calls for 120 turkeys, the weight of 3,384 pounds, at 30 cents a pound. There seems to be a discrepancy in the count of those turkeys, as we mentioned. That is how I come to remember it. There must have been only 110, but we have here 120, and I called Mr. Couch to see why I was short on weight, and we agreed it must have been 110 turkeys. Then there are some B turkeys, B's and turkeys in the amount of [178] 170 head. That would be B chickens and B turkeys at 23 cents a pound.

Q. What is a B turkey.

A. Well, these particular B chickens must be, I don't know, they must be a second-grade fryer and a second-grade turkey.

Q. Then how much did you pay for the turkeys in money at that time?

(Testimony of Orville Robert Lewis.)

A. It states here turkeys, \$1,015.20. We have B's and turkeys for the amount of \$220.17.

Q. Was that the reasonable and fair market price of those birds at the time you bought them?

A. I have no idea.

Q. Aren't you in the business of buying?

A. I am in the business of buying.

Q. Did you make that purchase yourself?

A. Yes.

Q. Do you consider you paid the fair market price?

A. I buy them as cheap as I can, sir.

Q. They were worth at least that?

A. They were worth that to me at the time.

Q. Did you have any conversation with Mr. Couch at the time of that transaction that you remember?

A. Most of the conversation that I remember was after the sale on the turkeys. [179]

Q. By that what do you mean?

A. Well, you see, we bought a turkey that was supposed to average over 30 pounds. I don't remember the conversation at the time of the sale of the turkeys. All I remember is that after we dressed the turkeys, we found that they didn't average heavy enough. So I immediately contacted Couch. I said, "I thought you said these were heavy Antelope Valley or Lancaster turkeys." I said, "They only average 29 pounds."

So then he came back at me and said, "That's right, we sure had 110 turkeys."

(Testimony of Orville Robert Lewis.)

So we had these turkeys loose. We dressed about 40 of them for an order and they weren't heavy enough. I don't know, they either shrunk or they didn't weight it. But I don't remember at the time of the unloading any particular conversation.

The Court: Just a minute. What did you mean when you said you thought these were Antelope Valley turkeys? Why did you say that if you didn't have any conversation about turkeys?

The Witness: Well, I don't remember the previous conversation. We get a better turkey from Lancaster than from the Riverside area, different turkeys, heavier turkeys as a general rule, better broad breast turkey, but I don't remember any of the conversation with Mr. Couch, only what happened after the turkeys were delivered.

The Court: Why did you say to Couch, "I thought you told [180] me these were Antelope Valley turkeys" if you hadn't had any conversation?

The Witness: I presume I must have, but I don't remember it.

The Court: Do you know where these turkeys came from?

The Witness: No, sir.

The Court: Do you know where these fryers came from?

The Witness: They were supposed to be desert fryers, that is what I paid for.

The Court: I am not asking you that.

The Witness: You don't know definitely. They

(Testimony of Orville Robert Lewis.)

were a desert type fryer, because at that time we were paying 32 cents for local fryers and 34 and 35 cents—I am going by records of that month, we paid Ontario Poultry 35 cents for desert fryers and we paid Freedman & Sons 32 cents for local.

The Court: Was this just one truckload?

The Witness: This is a truck pieced out, I mean they were part fryers and part turkeys and part B's.

The Court: All right.

Q. (By Mr. Maury): Do you remember having your deposition taken in my office on the 31st of October 1953? I show you my copy of it, particularly page 4, line 7. Do you remember my asking you:

“Q. Do you, by any chance, have any recollection of anything significant that was said between [181] you and Couch?

“A. After that time?

“Q. At that time.

“A. At the time of the purchase?

“Q. Yes. At the time of the purchase.

“A. Well, I will answer it this way: The turkeys were short weight. That is the main thing that called the thing to my attention.

“We bought the turkeys, say, on a specified date, on Tuesday. We didn't start to dress the turkeys until Wednesday. They were supposed to be a twenty-seven pound average, which would give you twenty-five pound turkeys and twenty-nine pound turkeys. When we went to kill the turkeys, our heaviest turkey was around twenty-three pounds.

(Testimony of Orville Robert Lewis.)

Now, I jumped Mr. Couch, contending that we got taken for some weight. His contention back to me was that we probably had more turkeys in the load than the specified number that we were supposed to have bought to balance out the weight.

"In other words, I don't remember how many turkeys we bought, but assuming we bought 200 turkeys, he claimed there were probably 230 turkeys to make up the loss in weight. That is all the recollection I have on that. [182]

"It was a dispute that came up three or four days or a week after I purchased the load. The load had already been processed. Of course, when we received the load, it was mixed in with another load, but in the whole load I didn't have any twenty-seven pound turkeys.

"Q. How many were mixed in with another load?

"A. In our processing we have a large pen. We had fowl or turkeys in that pen at the time, and unloaded these turkeys with the other turkeys. There is no reason to keep one turkey load separate from another in our place of business."

Do you remember being asked those questions and giving those answers?

A. Yes, but I got my figures transposed. You can see a 27-pound turkey would not dress out 25 pounds. It would lose at least five pounds.

Q. But you corrected your deposition after it was made, didn't you? A. I signed it, sir.

Q. Did you read it before you signed it?

(Testimony of Orville Robert Lewis.)

A. Well, I signed it. I did not read it before I signed it.

The Court: You buy turkeys, not upon the individual turkeys but upon the weight of the turkeys, don't you, the weight [183] of the loads?

The Witness: No. We buy turkeys on the weight of the individual turkey. We will grade turkeys from 28 pounds up and turkeys from 30 pounds up.

The Court: Didn't you weigh the turkeys as a whole?

The Witness: But you feel each individual bird and estimate very swiftly in grading turkeys or grading broilers, and you will know within four ounces or so what any bird weighs when you are unloading. I mean if you are in this business.

The Court: You didn't buy these turkeys for 20-pound turkeys or 30 pounds each, you bought 3,384 pounds.

The Witness: Yes, that was the weight.

The Court: The other invoice, you say that is August 8?

The Witness: August 3, sir.

The Court: Are those the only two transactions you had with Couch?

The Witness: During the month of August or September.

The Court: Had you dealt with Couch before?

The Witness: Yes.

The Court: How long?

The Witness: Three or four years.

(Testimony of Orville Robert Lewis.)

The Court: How long have you been in the turkey business?

The Witness: 32 years. [184]

The Court: Has your experience in the turkey business only been in the buying and dressing and processing of turkeys?

The Witness: Well, I have done everything in the turkey business from hauling them from Texas, I mean in 32 years I have gone the complete circle, I would think.

The Court: What questions do you ask the seller of turkeys as to whether or not they are mortgaged, there is a lien?

The Witness: When we buy from a farmer a flock of any size—smaller flocks we know are not mortgaged, but the larger flocks, if we know the farmer, we ask him and take his word for the fact, whether they are mortgaged or not. If we don't know the farmer, we don't usually buy them.

The Court: The truckers, what do you do about the truckers?

The Witness: We buy the stuff without question.

The Court: Without any inquiry at all?

The Witness: That is the general procedure, unless we are suspicious of the man.

The Court: Are you familiar with the custom in Southern California relating to the sale of poults and sale of feed to the farmers?

The Witness: Right.

The Court: What is that custom? [185]

(Testimony of Orville Robert Lewis.)

The Witness: I would say 90 per cent of the large flocks are owned by feed companies.

The Court: Are owned by the feed companies?

The Witness: I mean through the mortgage.

The Court: You mean through the mortgaging to the feed company? They are mortgaged to the feed company?

The Witness: Right.

The Court: Have you ever been given a written authorization to buy any turkeys from a feed company?

The Witness: It is a practice that does not exist. It is asked for, but never has been carried out.

The Court: Who has the authority to sell turkeys?

The Witness: Customarily the man that raises them is the one that sells them. I never bought anything from a feed company direct unless it was a foreclosure, of which I have had a lot. I mean they would foreclose on the mortgage.

The Court: When you go out to buy turkeys from a farmer, do you ask to see any written authorization to sell the turkeys?

The Witness: I never, and I bought lots.

The Court: You just buy them from the farmer.

The Witness: Just buy them from the farmer and make the check to the feed company and the farmer and go on.

The Court: That has been your experience?

The Witness: That has been the procedure for the last 30 [186] years.

(Testimony of Orville Robert Lewis.)

The Court: All right.

Q. (By Mr. Maury): Do your checks bounce?

A. Do my checks bounce?

Q. Yes, sir.

A. I have a statement I can bring up here for \$11,000 overdraft on my bank statement. I wouldn't think I would have much over that.

Q. The bank will meet your checks?

A. They can give up to \$15,000 on overdraft.

Q. Your credit is good?

A. My credit is good. I have had checks bounce.

Q. But not for not for sufficient funds.

A. Yes, but years ago. 32 years is a long time.

Q. Let's say in the last five years.

A. No, not the last 10.

Q. There was a depression in the 30s, remember.

A. I have had checks bounce just like Mr. Couch.

Q. But on this custom you speak of, it is customary for the checks to be paid at the bank, too, is it not?

A. My checks?

Q. All checks in the industry.

A. Well, I was in a creditors meeting less than two years ago where there was over \$30,000 checks issued to farmers and feed companies that were brought in at a creditors' [187] meeting over a period of time and they were bad checks.

Q. What would that be in percentage of the checks given in the industry?

A. Oh, the man over the same period had prob-

(Testimony of Orville Robert Lewis.)

ably bought \$250,000, of which \$30,000 was bad checks.

Q. That was just one man?

A. Just one man, just one instance.

Q. Do you know how many dollars worth of turkeys are produced in the Southern California area annually?

A. No. I could look at my files; but there are millions of dollars worth.

Q. Do you know of any custom or usage in the trade, the turkey industry, that checks are accepted as payment whether or not they are good checks?

A. Well, it is customary when I give the farmers a check payable to the feed company and the farmer for him to in turn turn that over to the feed company as a payment on his bill, which naturally he is given the same form of credit on it as in a bank deposit. They wait until the check has cleared, I mean they don't take a check as currency anyhow whether it is in the feed business or anywhere else. I mean the check has to be good.

Q. The check is not considered payment unless it is good?

A. Not in any line I have ever seen. [188]

Mr. Maury: That's all.

The Court: Any questions?

Mr. Nimocks: Yes, your Honor.

Cross Examination

Q. (By Mr. Nimocks): Mr. Lewis, I think you

(Testimony of Orville Robert Lewis.)

stated you have been in the business 32 years, is that correct? A. Right.

Q. You also stated during part of that 32 years, you were a hauler?

A. Yes. I still have trucks. In fact, I had three trucks in the country last year.

Q. Were you in approximately the same type of business John Couch and Charley Geers were in that sense? A. Yes.

Q. A huckster is the term commonly applied?

A. Yes.

Q. During the time you were so hauling, were these practices that have been described here used at that time?

A. Ever since I have been in business.

Q. Approximately how long were you a huckster?

A. 20 years. I had a retail store, but I bought from the—it was a combination business.

Mr. Nimocks: That's all. [189]

The Court: You said you had three trucks in the country last year. Did you have any trucks in 1952?

The Witness: Oh, yes. I don't know how much turkeys I bought.

The Court: How many trucks did you have in 1952?

The Witness: I had two available trucks at that time.

The Court: Did you buy turkeys or did some of your employees buy turkeys from the farmers in 1952?

(Testimony of Orville Robert Lewis.)

The Witness: Yes, sir.

The Court: When you went up to a farmer to buy turkeys, who sold the turkeys?

The Witness: The farmer.

The Court: Did you ever see any written authorization that he could sell turkeys?

The Witness: I never even contacted a feed man.

The Court: You never contacted a feed man?

The Witness: I just bought the turkeys from the farmer and made the checks payable by the hundreds to the farmer and the feed man. I never contact the feed man.

The Court: Supposing the farmer doesn't tell you the turkeys are mortgaged to a feed company?

The Witness: Make out the check to the farmer, if you know the farmer.

The Court: If you know the farmer?

The Witness: Yes. I mean I would have no reason to [190] doubt the farmer I have known for six years. There is one man I buy from all the time and he buys from a feed company, I presume. He pays his bills.

The Court: Have you bought from any farmers financed by Quaker Oats Company?

The Witness: Yes.

The Court: And you bought from the farmer?

The Witness: Directly from the farmer.

The Court: Did the Quaker Oats Company ever tell you you couldn't buy direct from the farmer?

The Witness: No.

The Court: Did Quaker Oats Company ever tell

(Testimony of Orville Robert Lewis.)

you you had to have written authorization to buy?

The Witness: No. I bought Quaker Oats feed but I never had any other dealings with them. My checks will say "Quaker Oats Company," that's all. A check that is made for poultry is to some farmer and Quaker Oats Company, or some farmer and Purina Feed Company, or some farmer and some other company.

The Court: I have no further questions.

Redirect Examination

Q. (By Mr. Maury): Your credit is good?

A. I have got a good credit rating.

The Court: If the bank is carrying him for \$15,000, it [191] is more than the bank will do for me. They won't carry me for \$15.

The Witness: I have been 32 years with the same bank.

Q. (By Mr. Maury): Do you know of any list which Quaker has of buyers who are entitled to buy——

A. I have never seen one.

Q. Excuse me. Let me finish. ——entitled to buy without direct permission from Quaker as to the transaction?

A. I have never seen one.

Q. You have never seen one?

A. I did do this this year. I called some big feed company when I started to buy and gave them my bank reference, told them to look me up, and if the farmer wanted to call in, it is customary for the farmer, if he is selling his merchandise, he doesn't even figure it is Quaker Oats merchandise,

(Testimony of Orville Robert Lewis.)

so when he goes to sell to me, if he doesn't know anything about my financial condition, it is much easier for him to call the feed company he deals with and ask them what the financial condition of this particular person is. In that way I think that the feed companies can investigate, and so in turn I called up the feed companies this year and told them to look up my credit with Dun & Bradstreet and the Bank of America, and if the farmer wanted to question me, I would tell him to call the feed company.

Mr. Maury: No further questions. [192]

Mr. Nimocks: No questions.

The Court: You may step down.

(Witness excused.) [193]

Mr. Maury: I will call Mr. McVicker.

HARRY McVICKER

called as witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you take the stand, please? Will you state your name?

The Witness: Harry McVicker.

Direct Examination

Q. (By Mr. Maury): Where do you reside, Mr. McVicker? A. California.

Q. In what county? A. Riverside County.

Q. You are acquainted with Charley Geers?

A. Yes, sir.

(Testimony of Harry McVicker.)

Q. When did you first meet him?

A. Oh, 1952, week of August 8.

Q. Where? A. At my ranch in Nuevo.

Q. Do you see him in the court room here?

A. Yes.

Q. What do you raise on your ranch?

A. Turkeys. [194]

Q. Did you have a conversation with Mr. Geers at that time?

A. Yes. He came to the ranch and wanted to buy the turkeys. He said, "I bought some of Ohlson's turkeys." So we had a little conversation.

He said he saved a little money and went in partnerships with Johnny Couch and was buying turkeys.

So I said, "Okay." I had another fellow, a prospect, and I said if he doesn't show up, then you can come back in a day or so and I will sell them to you, let you have them."

Q. Did he come back? A. He did.

Q. When was that that you first met him?

A. The 8th.

Q. The 8th?

A. No. It may have been a couple of days before that. I just don't remember, but it was within a week's time there.

Q. Now, calling your attention to Plaintiff's Exhibits 3, 4, and 5 in evidence, are you familiar with those documents? A. Yes.

Q. What is Exhibit 3?

A. What do you mean by what is it?

(Testimony of Harry McVicker.)

Q. Did you get that from Charley Geers? [195]

A. Yes.

Q. What day? A. The 8th of August.

The Court: Will you keep your voice up?

Q. (By Mr. Maury): Yes, will you, please? Everybody has to hear you. Is that your signature on the back of this? A. Yes, sir.

Q. What did you give to Mr. Geers in exchange for that? A. Turkeys.

Q. Do you know how many?

A. I just don't remember the number of them, no.

Q. Do you have any record of the poundage?

A. Mr. McCall, the State officer, has all that data.

Q. What office of the State is he with?

A. State Marketing Board.

Q. Of the State of California? A. Yes.

Q. You turned those records over to him?

A. That's right.

Q. When was that?

A. That was when there was the court session in Riverside.

Q. Calling your attention to this Plaintiff's Exhibit No. 4, did you receive that from Charley Geers?

A. This is on the 13th, wasn't it? There is one check [196] here that I don't remember, that is the last check I got was from Johnny Couch himself, that is why I don't remember. I believe this last

(Testimony of Harry McVicker.)

one, the last dated check I got from Johnny Couch, we will put it that way.

Q. The last dated check is the one you have before you? A. Yes, that is it.

Q. August 13th? A. Yes.

Q. He handed that to you in exchange for what?

A. Turkeys.

Q. The same records were kept as to those turkeys, and were they also given to Mr. McCall of the State department? A. That is right.

Q. Can you tell from the amounts of those checks approximately how many turkeys were involved in each of the transactions?

A. According to your price here, that is, it was 29 cents for toms, that would take a little while to figure it out, the number that was there.

Q. Was that the price you were paid?

A. I was paid, yes.

Q. 29 cents? A. That's right.

Q. Then it is a matter of simply dividing the numbers on these checks, the dollars and cents on these checks? [197]

A. By the poundage, but you have to have the weight slip, too.

Q. What became of the weight slip?

A. Mr. McCall has those.

Q. But you could determine the exact number of pounds, is that right?

A. According to the weight, yes.

Q. The weight comes from a public scale?

A. That's right.

(Testimony of Harry McVicker.)

Q. And 29 cents, you know that was the price you were paid?

A. That was for toms, I believe.

Q. And how much for hens?

A. I think it was 31 or 33, I just forget.

Q. Do you know whether you sold toms or hens at this time in August? A. I sold both.

Q. Do you know how many of each?

A. No, I don't just remember how many there was.

Q. Calling your attention to Plaintiff's Exhibit 3 in evidence, for \$1,432.20, can you tell whether or not that was toms or hens, or a mixture?

A. 1400—I really couldn't say. I would have to have the weight slip to figure it out.

Q. Would there be any duplicate weight slip at the [198] scales? A. Yes, there would.

Q. Is the same true of Plaintiff's Exhibit 5?

A. That's right.

Q. And of Exhibit 4? A. That's right.

Q. When you first met Mr. Geers, will you tell us the full extent of the conversation you had with him?

A. Well, he came to my ranch and said he bought Ohlson's turkeys and he would like to buy mine, he saved a little money and went in partnerships with John Couch and was buying turkeys. That was all.

The Court: Did you know John Couch?

The Witness: No, sir.

(Testimony of Harry McVicker.)

The Court: The name didn't mean anything to you?

The Witness: No, it didn't. It does now, though.

The Court: At that time.

The Witness: No.

Q. (By Mr. Maury): That was the first time you met him and that was all that was said at that time? A. That's right.

Q. When did you meet him again?

A. Well, on the date these checks are made out, on the 8th, and this is the last one Couch individually, he came by himself this time. I don't know whether this is the 14th or [199] the 12th, I don't know which. I can't see it here. I met Mr. Geers on three different occasions within a week.

Q. Was Mr. Geers present on the occasion of your receiving that check from Couch?

A. No, he was not.

Q. He was not present at that time?

A. No.

Q. Couch came that time alone, is that right?

A. That's right.

Q. But Geers came the first time?

A. Yes.

Q. After you got those checks, or during the second visit when you were given the first of the checks, on August 8th, what conversation was had at that time?

A. Very little. I don't believe there was hardly any conversation, just loading turkeys, and that was it.

(Testimony of Harry McVicker.)

Q. Just loading turkeys, and he gave you the check? A. That's right.

Q. Where did the information concerning Quaker Oats come from on that check?

A. Oh, as a general rule when I sell, Quaker Oats always had their name put on the check and my own.

Q. Did you have any understanding with Quaker Oats concerning selling the turkeys that way?

A. Well, no, I never had no trouble with Quaker Oats [200] selling turkeys.

Q. I said understanding.

A. Not to my recollection, no.

The Court: May I ask a question?

Mr. Maury: Certainly.

The Court: How long have you been raising turkeys?

The Witness: Seven years.

The Court: Have you dealt with Quaker Oats before 1952?

The Witness: Yes, sir.

The Court: Quaker Oats has always had a mortgage on the turkeys, have they, for the turkeys and the feed?

The Witness: Yes, sir.

The Court: Every year, you have sold the turkeys as the poults would grow up and mature?

The Witness: Yes, sir.

The Court: Did you ever have any written authorization from Quaker Oats that you could sell turkeys?

(Testimony of Harry McVicker.)

The Witness: No, sir, I didn't.

The Court: You just sold them to the buyers as they came along?

The Witness: That's right.

The Court: Then you notified the Quaker Oats that they had been sold and sent the money to them?

The Witness: I did not notify them first. I sent the money first. [201]

The Court: You sent them the money?

The Witness: That's right.

The Court: As far as Geers is concerned, you just followed the custom that had been established for several years, you sold the turkeys, took the check, and sent it to Quaker Oats, is that right?

The Witness: That's right.

The Court: Just a minute. I notice Exhibit 13, which is a turkey growers agreement, supposed to have been signed by you, specifically says, "Grower shall not sell, encumber, or otherwise dispose of said turkeys without the prior written consent of Quaker."

The Witness: Yes, sir. Well, it isn't strictly enforced that way. I don't know how to explain it.

The Court: But you never did get a written consent?

The Witness: No, sir, I did not.

The Court: And you sold your turkeys from year to year?

The Witness: That's right.

(Testimony of Harry McVicker.)

The Court: And Quaker never objected up to this particular time to your selling the turkeys?

The Witness: That's right.

Mr. Maury: May I have that exhibit, your Honor?

The Court: Oh, certainly.

Q. (By Mr. Maury): This is your signature, isn't it, Mr. McVicker, on Plaintiff's Exhibit 13?

A. Yes, sir.

Q. And your wife's? A. Yes, sir.

Q. You read it before you signed it?

A. That's right, sir.

Q. You are familiar with this clause 5, are you not? A. Yes, I am.

Q. "Grower shall not sell, encumber, or otherwise dispose of said turkeys without the prior written consent of Quaker and the proceeds of any sale consented to in writing by Quaker shall be payable jointly to grower and Quaker."

A. That's right.

Q. "Any such proceeds in excess of the amounts of money due Quaker hereunder to be refunded to grower." A. Yes.

Q. Have you received refunds from Quaker?

A. When was this?

Q. For money over and above the moneys you owed Quaker? A. No, I haven't.

Q. You never have. When you have sold turkeys, what have you done, accepted checks?

A. Yes, sir.

Q. From just anybody?

(Testimony of Harry McVicker.)

A. Well, it looked like legitimate business to me over [203] a period of seven years, and I have dealt with Quaker for five years now. I don't know. I just went ahead and sold each year and there never was no trouble but this last year.

Q. The year before last?

A. The year before last, yes.

Q. In other words, all the other checks you took were good, is that right?

A. That's right.

Q. You are acquainted with Mr. Brooks?

A. Yes.

Q. At about this time did you have any conversations with him? A. No, I didn't.

Q. Didn't he call over and get one of the checks?

A. Yes, that's right.

Q. What did he say at that time?

The Court: Just a minute. Prior to the sale to Geers, you had no conversation with Mr. Brooks?

The Witness: No, I didn't.

The Court: But after the sale, you did?

The Witness: Right after.

The Court: All right.

Q. (By Mr. Maury): What was said at that time by him and by you?

A. Well, I received the checks back that there wasn't [204] sufficient funds there in the bank, so Brooks picked them up, and that was it.

Q. What do you mean by "that was it"? He just took them along with him?

A. That's right.

(Testimony of Harry McVicker.)

Q. What did he say he was going to do with them?

A. Turn them in to Quaker Oats.

Q. How do you know there was insufficient funds in the bank at that time?

A. He had picked the two checks up that I had previously sold and took them in.

Q. That was the first two checks had been sent in by you to Quaker? A. That's right.

Q. And the third one, he came out and picked it up, is that it? A. I think he did.

Q. At that time did he tell you that the first two were refused by the bank?

A. That's right.

Q. What else was said, if anything?

A. I just don't remember what was said then. That was the finish of the turkeys. That was the last check.

Q. Have you ever received payment for those checks? A. No, I haven't. [205]

Q. Have you ever received any credit on the books of Quaker for those checks?

A. Not that I know of.

Q. Has Quaker ever given you any statement showing those checks have been paid?

A. No.

Q. Did you part with the turkeys before you got the check or at the same time?

A. At the same time.

Q. At the same time in each instance?

A. That's right.

(Testimony of Harry McVicker.)

Mr. Maury: I think you may cross examine.

Cross Examination

Q. (By Mr. Nimocks): Mr. McVicker, with reference to Exhibit 3, the check for \$1,432.20, where was that check delivered to you?

A. At Dan's Feed Store in Perris, California.

Q. What disposition did you make of it at that time, if any? A. What do you mean?

Q. What did you do with it?

A. I sent it to Quaker Oats.

Q. Immediately?

A. That's right, that same morning. [206]

Q. Plaintiff's Exhibit No. 5 made out in the amount of \$1,490.60, dated August 12, that was received by you where?

A. Dan's Feed Store at Perris.

Q. Did you also mail that immediately to Quaker Oats?

A. Well, I couldn't say for sure, because I think Mr. Brooks picked up one of the checks.

Q. Would you say he picked the first one up or the second one, do you know?

A. I don't really know.

Q. The one you mailed, where did you mail that? To Mr. Brooks or Quaker Oats?

A. Quaker Oats.

Q. Where? Los Angeles?

A. Los Angeles.

Q. Approximately how long after the check was mailed was it Mr. Brooks came out to see you?

(Testimony of Harry McVicker.)

A. Oh, the following week, I think it was.

Q. At that time do I understand your testimony to be that one of the checks had returned, or two of them had? A. Say that again?

Q. The first time you saw him was anything said about these checks? Had one of the checks or two of the checks returned at that time?

A. No. The following week he comes out and he told me they had been returned, they wasn't any good. [207]

Q. The first time you saw Mr. Brooks after you received this first check, where was that? Where did you see him? A. At my ranch.

Q. Was there any discussion with regard to these turkeys?

A. No, not that I remember.

Q. Was there any discussion with regard to the fact that you had sold certain turkeys to Charley Geers? A. No.

Q. There was nothing that had to do with this transaction at all?

A. I don't believe so, no.

Q. Later he came out with one or two checks which he said had been returned of Charles Geers, is that correct? A. That's right.

Q. Approximately how much time elapsed between the time you first received the check, the first check, and the time Mr. Brooks brought the check out to you?

A. I couldn't say. Probably 10 days, two weeks.

(Testimony of Harry McVicker.)

Q. Was it before or after you received Plaintiff's Exhibit No. 4, dated August 13?

A. It was after.

Q. It was after that. When he came out, he brought the first two checks back, is that correct?

A. I just don't remember whether that was the first [208] two, but they weren't any good, anyway. There was two checks he brought out and said they were no good, and then maybe a week later I got the others in a telegram from Quaker Oats.

Q. As to this third check, the later check, No. 4, dated August 13, what did you do with that check?

A. I sent it to Quaker Oats Company.

Q. In Los Angeles? A. Los Angeles.

Q. Is Plaintiff's Exhibit No. 5, the one dated August 12th, is that the only one you delivered to Mr. Brooks?

A. I couldn't say for sure which one he got.

Q. You have testified Plaintiff's Exhibit No. 3, the one dated August 8, you mailed in to Quaker Oats, and you have also testified Plaintiff's Exhibit 4, the one dated August 13, was mailed to Quaker Oats, Los Angeles? A. Yes.

Q. You said you delivered one to Mr. Brooks?

A. Yes.

Q. That was the one, No. 5, on the 12th, then, is that correct? A. Yes.

Q. Approximately how many turkeys did you have out there, Mr. McVicker?

A. I don't just remember the number.

Q. Can you approximate it? 200 or 2,000? [209]

(Testimony of Harry McVicker.)

A. Well, no, it wasn't 2,000. I just don't remember how many there was there.

Q. You had bought certain turkeys under the mortgage which you had given to Quaker Oats, is that correct? A. That's right.

Q. Approximately 1600 all told?

A. Probably around that, yes.

Q. Up to the time you sold these turkeys to Mr. Geers, had you sold any to anybody else?

A. No.

Q. By the time you finished these transactions with Mr. Geers and Mr. Couch, did you have any turkeys left? A. No, I didn't.

Q. Did you have any other kind of poultry or produce? A. No.

Q. Didn't have any checks? A. No.

Q. What is a B turkey?

A. Well, in the retail business they grade them back. I don't know. It isn't up to their standards. I wouldn't know very much.

Q. Would you recognize a B turkey if you saw one?

A. Well, I could name all the alphabet of them, but I wouldn't specifically say I could point out a B turkey. That is for the retail man and processor to figure out. [210]

Q. Is there a general distinction of a B turkey from any other kind of turkey? Is it different in weight or age? A. It could be.

Q. Take the sale you made to Mr. Geers Au-

(Testimony of Harry McVicker.)

gust 8th. Do you recall whether those were all hens or all toms or mixed, or what was the situation?

A. I believe they picked up the toms first.

Q. Did that first delivery take all the toms?

A. I don't believe it did.

Q. Then the second delivery was made, apparently, on August 12th, as evidenced by Mr. Geers' check dated August 12th. Do you recall whether that was all toms or all hens or mixed?

A. I don't know whether it was all toms or not. It has been so long ago, I have just forgotten, but I know they picked the turkeys up. In what way they went, I don't remember.

Q. I think you have already said you thought they picked up the toms first.

A. That's right.

Q. If they picked up all the toms in the first delivery, you don't recall? A. I don't.

Q. You are positive the second delivery included both hens and toms? [211] A. It could be.

Q. As to the third delivery, you think that was all hens? A. I believe so.

Q. You have stated you received, as you recall, 29 cents a pound on the toms and 31 cents a pound on the hens. A. That's right.

Q. Is that true as to all three deliveries or just one of them or two of them?

A. To the best of my memory, yes.

Q. You received a uniform price of 29 cents on the toms?

A. I believe so. I believe that was the price.

(Testimony of Harry McVicker.)

Q. Do you recall approximately how heavy the hens were on the average?

A. I imagine about a 15-pound average.

Q. What about the toms?

A. Oh, maybe between 27, 28.

Mr. Nimocks: I have some more questions, your Honor, but it is 12:00 o'clock.

The Court: May I inquire, Mr. Maury, how many more witnesses you have?

Mr. Maury: I have Mr. Ohlson and probably will put on a representative of Quaker Oats this afternoon and that will close the case. [212]

The Court: And how many witnesses do you have, Mr. Nimocks?

Mr. Nimocks: Four, two defendants and two other witnesses.

The Court: The defendants have already testified.

Mr. Nimocks: There are some other matters I want to bring out which weren't within the scope of the direct examination when they were on the stand before, your Honor. The examination should not be very long.

The Court: Can we finish the case this afternoon?

Mr. Nimocks: I hope so. I have six hearings set for tomorrow.

The Court: Maybe we'd better come back at 1:30. Is that all right.

Mr. Maury: Certainly.

The Court: We will recess until 1:30. [213]

Los Angeles, Feb. 25, 1954, 1:30 o'clock p.m.

The Court: You may proceed.

HARRY McVICKER

the witness on the stand at the time of recess, having been heretofore duly sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Nimocks): Mr. McVicker, in these loads of birds you sold to Charley Geers, I think I asked this question and I don't think you answered it, were there any B turkeys?

A. Well, not in my opinion, there weren't.

Q. What was the approximate age of these birds, do you recall? A. Oh, about 29 weeks.

Q. Were they fully matured?

A. They are supposed to be, if they aren't.

Q. I am asking about these particular birds. Were they?

A. As far as I am concerned, they were, yes. Finished, in other words.

Q. As I recall, you said you had been in this business for about seven years; is that correct?

A. That's right.

Q. Do you know what disposition ordinarily is made of these birds once you sell them to a huckster or processor?

A. They have grades they go by.

Q. I mean do you know what is done with the birds?

(Testimony of Harry McVicker.)

A. They are sold to a dresser, processor.

Q. Do you know in the ordinary course of business approximately how soon those sales are made?

A. That is by the processor?

Q. No. If you sell to a huckster, do you know in the ordinary course of business that he sells to a processor? A. Yes.

Q. On occasions you might sell directly to the processor, is that right? A. That's right.

Q. Ordinarily in the sale of that type, do you know approximately how long it is before those birds are processed? A. No, I don't.

Q. You have not been around any of these processors' plants to know?

A. No, I don't know.

The Court: I will take judicial knowledge that they are not going to keep turkeys cooped up any longer than is necessary. They take them down and sell them, get rid of them as soon as possible. [215]

Mr. Nimocks: Thank you. I have no further questions.

Mr. Geers: May I ask a question?

The Court: Yes.

Cross Examination

Q. (By Mr. Geers): Those checks we were talking about, did they come back to you marked not sufficient funds?

A. I don't believe they were marked not sufficient funds.

(Testimony of Harry McVicker.)

Q. How did you have knowledge of the fact that there was no funds there to cover them?

A. As far as I know, they were no good, so otherwise I took my own judgment that there were no funds then to make them good.

The Court: Just a minute. Did the checks come back to you or to the Quaker Oats?

The Witness: The Quaker Oats sent me the cancelled checks.

The Court: But you don't know what was on them when the Quaker Oats Company got them?

The Witness: No, I don't know, no.

Mr. Geers: I think two of them there still have the tab on, "referred to maker," rather than not sufficient funds.

The Court: That's the best evidence. The checks are the [216] best evidence.

Mr. Geers: These checks are——

The Court: Let's not argue that. Let's get in the testimony. I want to get the testimony in.

Q. (By Mr. Geers): There is Exhibit 5. What does that say is the reason the check is returned?

A. As far as my knowledge is concerned, this wasn't on here.

Q. That is on every check that comes back from the bank, I think. There is a place there to be marked.

A. It may have been, but I don't remember seeing it on there.

(Testimony of Harry McVicker.)

The Court: Well, this is the best evidence of what it was returned for.

Q. (By Mr. Geers): Did you have any discussion with Quaker Oats or any representative or agent of theirs regarding the sale of your turkeys to John Couch or myself?

A. Yes. I sold the first load to you and then Brooks came along and said, "Get your checks in to the Quaker Oats." That's all that was said.

Q. Your checks were already in, though, weren't they? A. That's right.

The Court: After you sold the first load, Mr. Brooks came around to see you and he said, "Get your checks in." Did he mean the checks for the birds that were already sold or the [217] birds that were to be sold?

The Witness: The birds that were already sold. He says, "Get your checks in."

Q. (By Mr. Geers): Did you call me on the phone any time prior to buying those birds?

A. No, I didn't.

Q. Did you have more than one grade or size of turkey? I think that question has been asked.

A. That's right.

Q. Did you?

A. As far as I am concerned, no.

Q. Had you had any illness in your flock that year? A. Any what?

Q. Illness, sickness?

A. Not that I know of, no.

Q. Did you sell us some cull birds?

(Testimony of Harry McVicker.)

A. No, no culls.

Q. We didn't clean up all that you had around there?
A. That's right, you did.

Q. Tell me, Mr. McVicker, and this is your own personal knowledge, not what they told Mr. Ohlson or anyone else, did they explain that contract you signed in its entirety, each line of it?

A. I am aware of the contract, yes.

Q. Did they explain it to you when you signed it? [218]
A. Your field man explains it.

Q. He goes through it all the way?

A. That is true.

Q. What did he tell you specifically when you signed up the first time with regard to selling?

A. The turkeys?

Q. Any turkeys.

A. As I understand, the lawyer has just shown me a contract I signed and that was it, "without written permission."

Q. You didn't follow the contract, did you, when you sold them?

A. That's right, I didn't, as far as that is concerned.

Q. Getting back to the checks, how much time elapsed, would you say, before they were returned to you from Quaker Oats Company, about what date?

A. Oh, I couldn't say truthfully. Maybe a week or 10 days, somewhere around there.

Q. The bank balance we have, and this is the

(Testimony of Harry McVicker.)

best evidence that we have right there, it is marked Exhibit A——

The Court: This witness doesn't know anything about that balance. You are not supposed to argue with the witness. He can only testify to facts he knows.

Mr. Geers: May I put it this way, this bank balance states the date those checks were written that the amount was in there. [219]

The Court: Well, this witness doesn't know a thing in the world about that.

Q. (By Mr. Geers): May I ask you this. If you were doing business with any bank and you get your bank statement at the end of the month and it showed a balance of \$500, or any other amount, wouldn't you assume you had that much money in the bank as of that date?

Mr. Maury: The defendant is arguing the case, your Honor, with the witness.

The Court: That's right. That is purely argument.

The Witness: That isn't my line. I am growing turkeys.

The Court: He is a turkey grower, not a banker.

Q. (By Mr. Geers): Mr. McVicker, I have two checks, Exhibits 3 and 4, here is one of them, and both of them bear my signature. You accepted both those checks. Tell me, would you say by looking at those checks they were one and the same?

A. I am no expert on handwriting.

Q. I realize that.

(Testimony of Harry McVicker.)

A. As far as that is concerned, I wouldn't say yes or no.

The Court: He can't testify to that.

The Witness: What have I got to do with this? What difference does it make whether I say this is this or this is that? Does that prove anything to me? I haven't got the money, so why should I answer a question like that? [220]

Q. (By Mr. Geers): Did the price we were paying look more attractive to you than what you had been offered?

A. No. You people are according to Hoyle with the rest of the people.

Q. Were you in pretty close contact with Mr. Ohlson at this time?

A. What do you mean?

Q. During this period of time when you were doing business with us.

A. He is a neighbor of mine.

Q. I mean did you discuss the price that we were paying and so on with him?

A. Naturally I would ask him how much you were paying.

Q. I have just one more thing to say. At the time you sold us these turkeys, if you hadn't thought it was okay with Quaker Oats to sell them to us, would you have gone through with the transaction?

A. If I hadn't thought it would be okay?

Q. Yes.

A. Sure, I wouldn't. If it wasn't okay with

(Testimony of Harry McVicker.)

them, if I had the belief it wouldn't be, I would have not sold them, no.

Q. In your belief, it was okay with the Quaker Oats to sell us those turkeys?

A. As far as my mind let me go, yes.

The Court: Any other questions? [221]

Redirect Examination

Q. (By Mr. Maury): You didn't expect to sell turkeys for bad checks, though, did you?

A. No, I did not. In a way, maybe the man is innocent, I don't know, but as a general rule we try to do legitimate business. That is where your written contract comes in which has been talked about which isn't enforced to a certain extent. It is more taking it for granted that a man is good.

Q. Have you ever received your money for these birds from Mr. Geers or Mr. Couch?

A. No, sir.

Q. Has Mr. Geers ever made the checks good, to your knowledge?

A. Not yet, no, sir.

The Court: I think you asked those questions this morning.

Mr. Maury: That will be all.

Mr. Nimocks: No questions.

The Court: You may step down.

(Witness excused.)

Mr. Maury: Counsel has stipulated this document may be received.

The Court: It maybe received as Plaintiff's Exhibit 22. [222]

The Clerk: Plaintiff's Exhibit 22 in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 22.)

Mr. Maury: I will call Mr. Ohlson.

CARL W. OHLSON

called as a witness herein by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name?

The Witness: Carl W. Ohlson, O-h-l-s-o-n.

Direct Examination

Q. (By Mr. Maury): What is your occupation, Mr. Ohlson? A. Turkey grower.

Q. Are you the man we have been talking about here as having received some of these checks?

A. Yes, sir.

Q. Your ranch is where?

A. At the corner of Ramona Land and Nuevo Road.

Q. That is in Riverside County, California?

A. Yes, sir.

Q. Calling your attention to check which I have laid before you, defendants McKibben, Carter and Lewis Exhibit A, did you receive that check from Mr. Charles Geers? [223] A. Yes, sir.

Q. About when?

A. Well, on the date of the check.

(Testimony of Carl W. Ohlson.)

Q. The date of the check. It was not postdated?

A. No, sir. It was given to me at the scales at the time they weighed the turkeys out and got the weight.

Q. What did you do with the check?

A. I held it a couple of days and then gave it to Mr. Brooks to take in to Quaker Oats.

Q. That is your signature on the back of it?

A. Right.

Q. With respect to Plaintiff's Exhibit 1, is that made out to you? A. Yes, sir.

Q. Was that handed to you by Mr. Geers?

A. I don't remember whether it was handed to me by Mr. Geers or Mr. Couch. They were both there at the time.

Q. They were both there at the time?

A. That's right.

Q. And that was the 13th of August?

A. Yes, sir, I believe it was.

Q. Do you know how many birds they received from you at that time?

A. Well, Mr. Maury, I had a flock of 1500 birds to start with in that flock and I had lost something over 100 [224] birds mortality.

Mr. Nimock: I can't hear.

The Court: Will you keep your voice up?

The Witness: So I had approximately 1,375 to 1,400 birds. As far as I know, as far as I can remember now, I sold one small lot of about 75 or 80, and the balance of the birds were picked up by Mr. Couch and Mr. Geers.

(Testimony of Carl W. Ohlson.)

Q. (By Mr. Maury): Were they in one load?

A. No. I can't recall definitely whether they took the toms first or whether they took the hens first. There seems to be a haziness in my mind, but I have a recollection that they picked the toms up first, because they had an order for them.

Q. And that first purchase was evidenced by the \$2,611.75 check?

A. That's right. I believe that check was honored, was it not?

Q. Eventually, yes. The other two were given at the same time, that is, Plaintiff's Exhibit 1 and 2 were given for the second purchase?

A. That's right.

Q. That totals \$2,315.75? A. That's right.

Q. Was that the entire remaining flock that you had of birds? [225]

A. That was the balance of that particular flock. I had two other flocks that year.

Q. They were younger birds?

A. They were younger birds. These were the birds that I received as poults in February.

Q. Were they full grown by August?

A. Yes, they were well matured.

Q. Do you remember the poundage or weight that was taken off on each of these two occasions by any chance?

A. I think my hens average about 14 $\frac{1}{4}$ pounds. The toms I think run around 26 pounds average. Of course, that means that there were birds above and below that figure in the flock.

(Testimony of Carl W. Ohlson.)

Q. Surely. They don't run uniform in size.

A. They don't run absolutely even.

Q. With reference to Plaintiff's Exhibits 1 and 2, the \$600 check and the \$1,715 check, have you ever been paid that amount of money?

A. No, sir, I have not.

Q. Has it ever been credited to your account by Quaker?

A. In and out. It was credited when I turned the check over to them and debited back to my account when the checks returned to Quaker.

Mr. Maury: Cross examine.

The Court: May I ask this witness some questions? [226]

Mr. Maury: Surely.

The Court: How long have you been in the turkey business?

The Witness: About four years.

The Court: Have you always dealt with Quaker?

The Witness: I dealt with Quaker for the first two years and that was the second year of my dealings.

The Court: In 1952, that was your second year growing turkeys?

The Witness: Yes.

The Court: In 1951 had you grown turkeys?

The Witness: Yes.

The Court: Did you deal with Quaker?

The Witness: Yes, I did. I started with Quaker.

The Court: You said you had two other flocks?

The Witness: That's right.

The Court: Did you have those with Quaker, too?

(Testimony of Carl W. Ohlson.)

The Witness: Yes. The whole year's operation was with Quaker Oats Company.

The Court: In 1951, how many flocks did you have?

The Witness: Two.

The Court: Who sold the flocks?

The Witness: I sold the birds.

The Court: Did you have any written authorization from Quaker that you could sell them? [227]

The Witness: I was in contact with their field man right along and their field man, who was Mr. Canan at that time, recommended Mr. Muzak, and I sold my birds to him and I had no trouble.

The Court: They didn't give you any written memorandum?

The Witness: No, they didn't give me any written memorandum.

The Court: In 1952, did you sell any birds in 1952 before you sold the birds in litigation here?

The Witness: I sold approximately 75 or 80 birds to a small operator.

The Court: Did you have written consent from Quaker to sell those birds?

The Witness: No, I didn't.

The Court: Did you just sell them yourself and then you sent the money to Quaker?

The Witness: I sold them myself, and the check was made out to both of us, and I sent it to them.

The Court: Did you talk to the field representative before you sold those birds?

The Witness: Yes, I did.

(Testimony of Carl W. Ohlson.)

The Court: You didn't talk to the field representative before you sold the birds to Mr. Couch, did you?

The Witness: Not the first load of birds, because they came in and wanted the birds between the visits Mr. Brooks [228] made every week.

The Court: After you sold the first batch, you had a talk with him?

The Witness: I talked to Mr. Brooks about it and he said as far as he knew that Mr. Couch and Mr. Geers were operating legitimately, that there had been some trouble in a prior year with Mr. Couch, but he thought that had all been straightened out, but he suggested I get my checks in promptly.

The Court: He didn't tell you you couldn't sell to Couch?

The Witness: No, he did not.

The Court: He didn't tell you you had to have written authorization to sell?

The Witness: No. He said Quaker Oats were preparing a list of approved buyers, but I never did receive that list of approved buyers. That was after I had already sold the birds. I waited for it. He said that wasn't on that list I should call the office and make sure the operator was trustworthy.

The Court: You didn't have any experience in raising turkeys except these two years, is that right?

The Witness: That's right.

The Court: I have no other questions.

Mr. Nimocks: I have a few, your Honor. [229]

(Testimony of Carl W. Ohlson.)

Cross Examination

Q. (By Mr. Nimocks): Mr. Ohlson, I think you testified your recollection was that they picked up the toms first, is that correct?

A. I believe, I can't definitely say it is, but it is my recollection they picked up the toms first because they had an order for them.

Q. Do you recall what price per pound you were paid for those toms?

A. Well, as far as I can remember, it was right around 29 or 30. Prices were pretty punk that year.

Q. What price were you paid for the hens, do you recall?

A. I think it was 31 or 31½. I wouldn't make that as a definite statement. It could be checked with the weight slips.

Q. You don't have the weight slips with you?

A. No. Those were turned in to Mr. McCall of the State Department of Markets, and the Assistant District Attorney in Riverside. As far as I know, they have never been returned. They either have them or have turned them over to Quaker Oats, I don't know which.

Q. Do you know the general practice in the trade with regard to slaughtering these birds once they are sold?

A. Only what I have heard. I don't know directly. [230]

Q. Have you ever sold any birds directly to a processor?

A. Yes, I have sold birds to the Universal Mar-

(Testimony of Carl W. Ohlson.)

keting Company in Riverside, went in with the truck and weighed them out and saw them unloaded in a pen at the processor's plant.

Q. Do you know whether there is any shrinkage in these birds?

A. Between leaving my place?

Q. Yes.

A. Yes, certainly there is.

Mr. Nimocks: No more questions.

Mr. Geers: May I ask a question?

The Court: Yes.

Cross Examination

Q. (By Mr. Geers): Mr. Ohlson, did Quaker Oats explain to you fully the contract you were signing when you first started growing for them?

A. I wouldn't say there was a detailed explanation of the contract, no. That isn't usual in any business.

Q. How did they go about signing up a grower?

A. They ask you a number of questions in regard to your experience, your financial liability, your assets, and such pertinent data as they need to complete their records.

Q. Do you ask them any questions, then, as to what you [231] are supposed to do to fulfill your end of it?

A. I asked them whatever information I could think of at that time that I think will be helpful to me. What that was at that time, I can't recall.

(Testimony of Carl W. Ohlson.)

Q. Did they give you specific instructions on how to go about marketing and who to sell to?

A. No, I don't recall that I was given specific instructions.

Q. If you hadn't thought it was okay with Quaker Oats in following along the same method you had used the previous year, in 1951, in selling your birds, would you have sold those birds to us?

A. I wouldn't have sold them to anyone If I had known it was not the right thing to do, sir.

Mr. Geers: Thank you.

Redirect Examination

Q. (By Mr. Maury): Would you have sold them at all if you thought the checks were going to come back? A. Certainly not.

Q. You did not have any agreement with Mr. Geers whereby you would accept those checks as payment unless they cleared?

A. It was the assumption that those were good checks. I am holding the bag, Mr. Maury. I am out that money. [232]

Mr. Maury: That's all.

The Court: You may step down.

(Witness excused.) [233]

The Court: Call your next witness.

Mr. Maury: At this time, your Honor, I would like to call for the deposition of John Couch.

The Court: You want to read it into the record?

Mr. Maury: Yes, your Honor.

The Court: I suggest one of you ask the ques-

tions and the other will read the answers in the copy. Have you a copy?

Mr. Nimocks: I have a copy, but I shall object to its introduction as hearsay evidence, on behalf of the Defendants McKibben, Carter and Lewis. We never had any notice of the taking of the deposition.

Mr. Maury: That is true.

The Court: Mr. Couch is not here. He is deceased. This is the only testimony we have. I will overrule the objection.

Mr. Maury: Not only that, but I would also like to state in connection with the objection that Mr. Couch died about the 3rd of December, 1953 and that his deposition was taken January 21, 1953, and on October 12, almost sixty days before Mr. Couch departed this life, I personally handed a copy of this deposition to counsel while Mr. Couch was still alive and within the jurisdiction.

Mr. Nimocks: I had no opportunity to cross examine at that time.

Mr. Maury. You had an opportunity to take his [234] deposition, if you wanted it.

The Court: I will overrule the objection and allow you to read it.

Mr. Maury: This is the deposition of John Couch, a defendant herein, produced as a witness on behalf of the plaintiff, pursuant to the Federal Rules of Civil Procedure, and taken on Wednesday, January 21, 1953, at the hour of 11:00 o'clock a.m., at Suite 435—215 West Seventh Street, Los Angeles, California, before Clifford A. Hennen, a

Notary Public in and for the County of Los Angeles, pursuant to Order.

JOHN COUCH

a defendant herein, produced as a witness on behalf of the plaintiff, pursuant to the Federal Rules of Civil Procedure, being first duly sworn by the Notary Public, testified as follows:

The Notary: Will you state your name for the record, please?

The Witness: John Couch.

Direct Examination

Q. (By Mr. Maury): Will you state your name, please? A. John Couch.

Q. You are one of the defendants in this action?

A. That is right.

Q. Quaker Oats versus Couch and others.

How long have you known Charley Geers?

A. Two years.

Q. When did you first meet him?

A. A couple of years ago. I cannot say the exact date or anything.

Q. Where?

A. Working for Don Gilmore.

Q. Where did you meet him?

A. Riverside.

Q. Now, you have a place of business in Riverside, haven't you? A. That is right.

Q. Where is it?

A. 4398 Park Avenue.

Q. Is that at 14th and Park Avenue?

(Deposition of John Couch.)

A. That is right.

Q. What is the name of the concern?

A. Park Avenue Poultry.

Q. Park Avenue Poultry Company. Who owns it?

A. I do.

Q. How long have you owned it?

A. Ten months.

Q. Where did it have its bank account during August [236] of 1952?

A. Security-First National in Downey.

Q. Did it have any bank account at the Norwalk branch of the Bank of America?

A. Not as far as the poultry.

Q. Did you have a bank account there?

A. Yes, I did.

Q. And who else was on the signature card there?

A. Charley Geers.

Q. You were registered there as partners, were you not?

A. No.

Q. What did the signature card show?

A. Just a personal account, either one could sign.

Q. Was it a joint bank account belonging to both of you?

A. That is right.

Q. And the funds therein belonged to both of you?

A. That is right.

Mr. Maury: Let the record show that your counsel has handed me a copy of certificate of individuals doing business under the fictitious firm name which apparently shows that you published such a certificate in the Riverside Daily Press on

(Deposition of John Couch.)

April 11, 1952, and May 2nd of 1952, showing you to be the sole owner of the business entitled "Park Avenue Poultry Company," which is at 4398 Park Avenue, Riverside. [237]

Q. This document was published by you in the Riverside Press? A. That is right.

Q. And filed by you in the office of the County Clerk in Riverside? A. That is right.

Q. Now, during the month of August, 1952, where did Charley Geers do business?

A. You mean as far as buying poultry?

Q. Where was his headquarters for doing business?

A. Well, he worked out of the store. The calls came into my store.

Q. Now, I have here some photostatic copies of some checks. There is one check made out to C. W. Ohlson for \$600.00.

I want you to tell me if you are familiar with the handwriting on that check.

A. That is Charley's signature all right.

Q. Whose handwriting is the rest of the check in, do you know?

A. I do not think it is mine, but it could be.

Q. It could be yours. Are you acquainted with C. W. Ohlson?

A. Just from—not personally, no.

Q. Do you know him at all, personally or otherwise? [238]

A. Just from picking up the turkeys when we were out there once, is all.

(Deposition of John Couch.)

Q. You were out there once?

A. That is right.

Q. That was on the 13th of August, wasn't it?

A. I could not say what day.

Q. Well, was it at the time this check was given?

A. Possibly was.

Mr. Maury: I will ask the reporter to mark this check for identification.

(Thereupon, the document referred to was marked Plaintiff's Exhibit 1 for identification.)

Q. (By Mr. Maury): Calling your attention to other check dated August 13, 1952, made out to C. W. Ohlson and Quaker Oats Company, I hand you this. Please let your counsel see it.

I ask you, is any part of that check made out in your handwriting?

A. I do not think that one is, no.

Q. Are you familiar with the telephone number that appears in the upper left-hand section of that check?

A. That is the phone number of the store.

Q. And were you present when that check was written?

A. I could not say for sure.

Q. You will not say you were? [239]

A. I won't say I was or was not. I am not sure.

Q. You do remember the incident, however, of going out and purchasing some poultry from C. W. Ohlson, do you not?

A. I did not purchase it.

Q. You were there when it was purchased, weren't you?

(Deposition of John Couch.)

A. I was there when some of it was picked up. The deal was made over the phone, I think.

Q. And who made it?

A. Through Mr. Brooks and Charley Geers and Ohlson, if I am not mistaken.

Q. Charley Geers made the deal?

A. That is right.

Q. Then you went out with him, is that right?

A. Afterwards, yes.

Q. And picked up the turkeys, is that true?

A. Some of them, not all of them.

Q. How many did you pick up?

A. Oh, my truck—I only hauled one load, actually.

Q. And where did you take those?

A. Thrifty Poultry.

Q. How many were there?

A. A little over four thousand pounds. I do not remember exactly how much.

Q. And you delivered them to Thrifty Poultry?

A. That is right. [240]

Q. Who did you see there that you delivered them to? A. Orville Lewis, I think.

Q. And how much money did you get?

A. That I do not remember. It was turned over to Charley and he put it in the bank.

Q. You turned it all over to Charley Geers?

A. He put it in the bank.

Q. What bank? A. Norwalk.

Q. That is the bank account on which these checks were drawn? A. That is right.

(Deposition of John Couch.)

Q. When did you put it in there?

A. The same day.

Q. The same day that you delivered the checks?

A. That is right.

Q. And you delivered the checks to Ohlson, did you?

A. No, I did not deliver the checks to Ohlson.

Q. Who did?

A. Evidently when the turkeys were picked up at the scale that is when he got his check.

Q. That is when Ohlson got these two checks?

A. It would almost have had to have been, wouldn't it?

Q. I do not know. When you picked up those turkeys did you deliver the checks to Ohlson? [241]

A. Possibly could have because both trucks were going that day and they were filled out at the scale.

Q. By "both trucks" what do you mean?

A. My truck and his truck, too.

Q. Who is his truck?

A. Well, he had his own truck.

Q. Geers had his own truck?

A. That is right.

Q. And he put the money into the joint bank account of you and him?

A. That is right.

Q. Did you deliver those checks to Ohlson or did Geers?

A. Well, one or the other of us did or someone else that was working for us.

Q. You were both working on the same deal?

(Deposition of John Couch.)

A. No, I wasn't allowed to buy anything off of Quaker Oats. The deal was all his.

Q. How much money did you get out of the deal?

A. So far I haven't got anything.

Q. How much are you entitled to out of the deal?

A. I would like to have the \$1,400.00 it cost me.

Q. How much are you entitled to out of the whole deal?

A. There wasn't anything there to be entitled to. I was entitled to my truck, I mean, what I would have made on it.

Q. How much was that? [242]

A. I cannot very well say how much it is if you did not make anything.

Q. How much was it supposed to be?

A. It should have been a cent a pound for hauling.

Q. That is what Geers agreed to give you, a cent a pound?

A. On the whole thing, that is right.

Q. For hauling? A. Yes.

Q. How much are you supposed to share in the profits of the deal?

A. Well, on anything I haul I am supposed to get reimbursed, I mean, so much for hauling it.

Mr. St. Clair: That isn't the question. He is asking you, were you to get any profits out of the sale. Yes or no or what it was, in any period.

The Witness: Well, the agreement we made was

(Deposition of John Couch.)

anything I hauled for him would have been split, or if he had hauled anything for me it would have been split.

Q. (By Mr. Maury): I see. You would have split the profits, is that it? A. Yes.

Mr. Maury: All right.

Will you mark this second check, Mr. Reporter?

(Thereupon, the document above referred to was marked Plaintiff's Exhibit 2 for identification.)

The Witness: I was told by Mr. Geers that some of the checks cleared.

Q. (By Mr. Maury): For your information, there is not one of them that has cleared.

A. That doesn't quite total \$10,000.00.

Mr. St. Clair: Just a minute. You wait and answer his questions.

Q. (By Mr. Maury): Calling your attention, now, to this next check which is dated August 8th, which I hand you and which your counsel has seen, are you familiar with the handwriting on that check?

A. It looks like Charley's, but I could not be sure.

Q. Is it his signature? A. Yes.

Mr. St. Clair: Speak up so the reporter can hear what you say.

The Witness: It appears to be.

Q. (By Mr. Maury): It was drawn on his account where you and he had the joint account, is that right? A. That is right.

(Deposition of John Couch.)

Q. Do you know who wrote the words in the upper left-hand [244] corner that says "Park Avenue Poultry"?

A. It looks like the same writing.

Q. And that is the telephone number of the Park Avenue Poultry? A. That is right.

Q. That is Riverside Phone 12257, is that it?

A. That is right.

Q. Are you acquainted with Mr. McVickers?

A. Just to—met him once, is all.

Q. When was that?

A. When I picked that one load of turkeys and delivered them to Thrifty from him.

Q. When was that?

A. Around the 10th of August.

Q. About the 10th of August?

A. I am not sure what the date was.

Q. And was it on the same kind of a deal that you had with Charley Geers and with Ohlson?

A. That is right.

Mr. Maury: May this be marked, Mr. Reporter, as exhibit next in order?

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 3 for identification.)

Q. (By Mr. Maury): Calling your attention, now, to this next check which is dated August 12, 1952, are you familiar with the [245] handwriting on that check?

A. Looks like the same as the other ones to me.

Q. And do you know what that was given for?

(Deposition of John Couch.)

A. It would have had to be for turkeys.

Q. Were you present when that check was given to McVickers?

A. I do not know for sure. I do not think so.

Q. You do not think so, but you may have been?

A. May have been.

Q. I see. If McVickers' testimony is that you were there he would probably be right, is that right?

A. By looking up my books I could probably tell whether I was in that day.

Q. You do keep a set of books which tell you where you were on such and such a day?

A. If I happen to issue a check or something on that date, it would have been there.

Q. Did you issue that check? A. No.

Q. It was issued on this bank account that you had a joint signature on?

A. That is right.

Q. I will call your attention to the next check which is dated August 13, 1952. Are you acquainted with the handwriting on that check? [246]

A. This is the one I picked up.

Mr. Maury: Will you mark the check dated August 12th, please.

(Thereupon, the document was marked Plaintiff's Exhibit No. 4 for identification.)

The Witness: This is the one I picked up that went to Thrifty Poultry.

Q. (By Mr. Maury): What do you mean?

(Deposition of John Couch.)

A. I remember the amount 1365, about 4,200 pounds.

Q. And you gave that check at the time the poultry was picked up?

A. That would have been the one I took out with me, yes.

Q. I see. You took the load of poultry out, then, on the 13th of August?

A. That is right.

Q. And did you give that check or did Geers give it at that time?

A. Well, I did not pick up the poultry, myself. I sent the truck out with the boy to pick it up.

Q. I see. It was your truck?

A. That is right.

Q. And you were to share in the profits of the poultry deal just as before? [247]

A. On this particular load I sold for him, Thrifty Poultry.

Q. What was the weight of that, do you know?

A. That I could not say for sure.

Q. The records of Thrifty would show you, however, would they?

A. Well, no. We had some stuff we took out of the store and added onto it.

Q. Then this check for \$1,365.90 is a check that was given——

A. That load went to Thrifty Poultry.

Q. Then you know that this check was given in exchange for poultry to McVickers?

A. That is right.

(Deposition of John Couch.)

Q. And this check is in the handwriting of Charley Geers, or is any of it in your handwriting?

A. I think the fellow that took the truck out filled it out.

Q. And it was sent out with your authority?

A. That is right. I sent the reports.

Mr. Maury: Will you mark this?

(Thereupon, the document referred to was marked Plaintiff's Exhibit 5 for identification.)

Mr. St. Clair: May we clear that, whether the authority is for the check or the truck, Mr. Maury?

Mr. Maury: All right. You clear it up.

Mr. St. Clair: Was that check sent out with your authority or was the truck sent out with your authority, or were both sent out with your authority?

The Witness: No, the truck was sent out with my authority to pick them up. Charley pays for them. I sold them.

Mr. St. Clair: Did you send the check out with the authority to give it to McVickers or not?

The Witness: No. Charley had to pay for them. I could not pay for them.

Q. (By Mr. Maury): Did you send the check with the driver of the truck?

A. No, Charley sent the check.

Q. Was he there when the truck started out?

A. Yes.

Q. And he gave the driver the check?

A. That is right.

Q. Were you there at the time?

(Deposition of John Couch.)

A. That is right.

Q. You saw the driver start off and saw Charley give him the check? A. Yes.

Q. Now, did you ever have any conversations with Mr. Ohlson about this deal? [249]

A. No, I did not.

Q. You never did? You are sure about it?

A. That was entirely up to Charley, the price he paid and the agreement they had.

Q. You are sure that you never talked to Mr. Ohlson, is that right, about this deal before it was made? A. No, I did not.

Q. You are sure of that? A. I am sure.

Q. How about McVickers? Did you go out to McVickers and talk to him before this deal was made? A. No, I did not.

Q. Now, how many pounds of turkeys did you deliver to the Downey Poultry and Rabbit Supply Company?

A. They would have the weight slips on that.

Q. But you did deliver some?

A. I helped them take them in, yes.

Q. That was turkeys that were received from the McVickers or the Ohlson ranches?

A. Yes.

Mr. St. Clair: May I clarify that? Was that McVickers, only, that you got turkeys from and delivered or was it Ohlson and McVickers?

The Witness: McVickers is the one I used my truck on to pick up the load that I delivered. [250]

(Deposition of John Couch.)

Q. (By Mr. Maury): Which did you deliver to Downey? A. That I do not know.

Q. But you did deliver some to each?

A. Yes. I mean, we had other stuff we put on the truck, too, stuff that I had.

Q. You did deliver some, then, to Downey Poultry? A. That is right.

Q. You delivered some to Thrifty?

A. That is right.

Q. And your truck picked up some from McVickers and some from Ohlson?

A. No, my truck did not pick up any from Ohlson.

Q. Were you to share in the profits of the turkeys that were received from Ohlson?

A. Well, if I had hauled any of them on my truck I would have been, but otherwise I did not.

Q. And yet you allowed the joint funds of yourself and Geers to be drawn on for the purchase of turkeys from Ohlson, is that correct?

A. We were going to enter into a partnership, which we never did.

Q. When were you going to enter into a partnership?

A. As soon as he got his license and everything all cleared up. [251]

Q. And when did you have an agreement to enter into a partnership?

A. We talked about. I do not know the exact date.

(Deposition of John Couch.)

Q. Was it about the time you opened this bank account in Norwalk?

A. Some time along about that time.

Q. When was that opened?

A. I could not say offhand.

Q. How many other bank accounts have you and Geers opened? A. None.

Q. None at all? A. No.

Q. That is the only one?

A. That is right.

Mr. Maury: I think that is about all, counsel.

Do you wish to ask any questions?

Mr. St. Clair: No, not this time.

Mr. Maury: The record may show that I hand the exhibits to the reporter for custody purposes only. The original photostats will be attached to the original deposition.

Mr. St. Clair: It is stipulated that this may be read and signed before any Notary Public?

Mr. Maury: Yes, either in this county or Riverside. [252]

Mr. Nimocks: For the purpose of the record, your Honor, I would like to make a motion to strike on the basis, interposing an objection, that the matter is still hearsay as far as McKibben, Carter and Lewis.

The Court: Overruled.

Mr. Maury: Counsel has stipulated this is his signature, your Honor, and I offer it.

The Court: It may be received as Plaintiff's Exhibit 23.

Mr. Maury: It shows the receipt of the deposition.

The Clerk: Exhibit 23.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 23.)

Mr. Maury: The plaintiff rests, your Honor.

Mr. Nimocks: Now, at this time on behalf of the Defendants McKibben, Lewis and Carter, I would like to make a motion for nonsuit. My motion is based on the following facts.

The Court: You just make the motion and I will do the ruling and then we will proceed on with the case. You just make the motion.

Mr. Nimocks: I do make it on the basis of the fact that he has failed to trace his turkeys.

The Court: Denied. You may proceed. [253]

SAMUEL GEORGE MORNING

called as a witness by and on behalf of the Defendants McKibben, Carter and Lewis, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name?

The Witness: Samuel George Morning.

Direct Examination

Q. (By Mr. Nimocks): Where do you live?

A. Fontana.

Q. What is your trade or occupation?

A. Poultry buyer.

Q. How long have you been so engaged?

(Testimony of Samuel George Morning.)

A. Six years.

Q. Six years, you say? A. Yes, sir.

Q. During that time have you purchased turkeys from growers who had chattel mortgages with Quaker Oats? A. Yes, sir.

Q. What was the general practice in the trade, if you know, as to procedure in handling these turkeys?

A. Well, we buy them from the farmer, direct from the farmer.

Q. How do you make out your check in payment? [254]

A. To the farmer and the feed company.

Q. Have you had any written notice from Quaker Oats in those instances as to how you should proceed? A. No, sir.

Q. Do you deal with Quaker Oats representatives? A. I never have, sir.

Q. How do you ascertain whether these birds are mortgaged or not?

A. We ask the farmer, and if he says they are mortgaged, we ask him who by, and we make out the check to him. If he says they are not mortgaged, they are his, and his flock is too big, we don't buy them or we check into it.

Q. Has that been the general practice during your six years?

A. That has been my practice, yes, sir.

Mr. Nimocks: I believe that's all, your Honor.

(Testimony of Samuel George Morning.)

Cross Examination

Q. (By Mr. Maury): Mr. Morning, you said if the flock is too big, you check into it?

A. Say a person has anywheres over one hundred, say one hundred birds, we know a man can't have that much money, nobody has got that much money to handle them personally.

Q. What kind of check do you make if the man has that many? [255]

A. We make out the check to the feed company and the farmer.

Q. What do you mean by check into it?

A. If he says they are his birds, I try to find out where he buys his feed, and I go to the feed company, and if I find out he pays cash for the feed, then I go back and buy them.

Q. Do you always ask these questions about a flock larger than a hundred?

A. You bet your life.

Q. How many dollars would that be?

A. One hundred tom turkeys run right around eight or nine hundred dollars.

Q. And one thousand would be eight or nine thousand? A. You ain't just kiddin'.

Q. So you exercise what you call care in looking into the question of whether or not there is a mortgage on the flock?

A. That is to protect myself.

Mr. Maury: I think that's all.

The Court: May I ask a question?

You have bought turkeys from farmers who have

(Testimony of Samuel George Morning.)

had their turkeys mortgaged to feed companies?

The Witness: Yes, sir.

The Court: Have you ever seen a written authorization for [256] the farmer to sell the birds?

A. I never have, sir.

The Court: You have always dealt with the farmer direct?

The Witness: Yes, sir.

The Court: Never dealt with the one who owns the mortgage or holds the mortgage?

The Witness: No, sir, I have not.

The Court: I have no other questions.

Q. (By Mr. Maury): Have you ever dealt, sir, with any truckers who just brought birds to your place? A. No. I am a buyer.

Q. For whom? A. For myself.

Q. Are you a processor?

A. No, sir, I am just a hauler.

Q. Just as Mr. Geers and John Couch were?

A. Well, maybe not quite that way, but I am a hauler.

The Court: You have a different technique.

Q. (By Mr. Maury): I take it your credit is good? A. I think so.

Q. Have you ever had any checks bounce for birds you bought?

A. If I have, I have never got them back.

Q. When you buy birds and take them to a processor, if the birds are larger than say one hundred birds, what, if any [257] custom is there with

(Testimony of Samuel George Morning.)

respect to the processors asking you about mortgages?

A. Well, they have, and I tell them I make the checks out to the farmer and I got a receipt showing the farmer signed the slip. If they want to see it, I show them that I bought and paid for the birds.

Mr. Maury: That's all.

Redirect Examination

Q. (By Mr. Nimocks): You buy these birds yourself? A. That's right.

Q. You sell them to the processor at a profit, is that correct? A. Yes.

Q. You inform the processor where you got the birds?

A. No. That is my business. If they have their own trucks, they might go out and try to buy them from under me.

Q. In other words. you pay for the birds and you resell them?

A. I pay for the birds at the scale and I take them into town and get my check there.

Mr. Nimocks: No further questions. [258]

Recross Examination

Q. (By Mr. Maury): If the processor asks you where you got the birds you have for sale, you tell them, is that right?

A. After I have bought the birds, yes, not before.

Q. You go to a farmer, you buy the birds, and you take them to the processor?

(Testimony of Samuel George Morning.)

A. If there are some more birds on the farm, I don't tell them until I get them off. You know, they are kind of chiselers, too. They will go out and buy under you.

Mr. Maury: Thank you, sir.

Redirect Examination

Q. (By Mr. Nimocks): Is it customary for these processors to ask you where the birds came from?

A. No, they don't. I have been hauling quite a few years, and occasionally they ask me, and I tell them, if they want to know about my business, they will have to advertise like I do.

Mr. Geers: They might ask the locality, but not the grower.

The Witness: Oh, they might ask and I would tell them Perris, Riverside, or wherever it might be, but I don't tell them the exact address. [259]

Mr. Geers: That is all.

The Court: You may step down.

(Witness excused.)

Mr. Nimocks: I represented to the Court I would put on both defendants, but in talking it over I have decided not to call them. I have another witness, but he will testify to just about the same thing Mr. Howard Fritz.

Mr. Maury: If it is corroborative, I will stipulate it will be the same.

Mr. Nimocks: I will accept the stipulation and the defendants will rest.

The Court: We have got another defendant here. Mr. Geers?

Mr. Geers: Well, your Honor, I think my part of the case is pretty well covered in the banking technique.

The Court: You have no other testimony?

Mr. Geers: None, except the fact that we did have the money in the bank.

The Court: That is argument. You rely on the testimony already presented in this case?

Mr. Geers: I don't know of anything we could say further.

The Court: All right. Let the record show you rest.

Mr. Geers: And the exhibits you have.

The Court: I don't want you to say later you were cut off from presenting any evidence you have. If you have any [260] additional evidence, I would want it now.

Mr. Geers: None other than the exhibits.

The Court: All right.

Mr. Maury: Suppose we have a recess and we will decide whether we have any rebuttal during the recess.

The Court: We will now recess until twenty minutes to 3:00.

(Recess.)

Mr. Maury: I should like to recall Mr. Geers for a few questions, your Honor.

The Court: All right.

CHARLEY GEERS

called as a witness in rebuttal on behalf on the Plaintiff, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Maury): Mr. Geers, I believe you testified yesterday prior to purchase of these turkeys in each instance you had an arrangement with an L. A. market, is that right? A. Yes.

Q. For the sale of them?

A. Yes. I said with the exception of possibly some [261] that might have gone to the beach.

Q. What L.A. market was this you had an arrangement with to sell the turkeys before you bought them?

A. Mr. Couch handled most of the phone calls and what not, because he had the connections to sell. He knew all the people, the processors in the L.A. trade area through the past experience he had with them.

Q. But as to these particular sales at the L.A. market, what market was it you had the arrangement with?

A. I couldn't answer that question.

Q. But you know you did have an arrangement?

A. I know on part of them, yes.

Q. During the recess you examined those documents that are in evidence and you mentioned to me the sum of \$3,000 that you did not find as having been deposited in the bank account. Will you tell the Court about that?

(Testimony of Charley Geers.)

A. Well, at one time we sold some turkeys, some breeder turkeys, a long time before this period we have been discussing here in court. They came from, I believe the Smith Ranch near Perris, and they sold those turkeys, we sold them to Simmons Processing Plant and the check was somewhere in the neighborhood of \$3,000, something like that, and I know that Mr. Couch took the check down to Simmons' bank right there, I think in Monrovia or somewhere in that area, wherever the man did his banking business, he took the check down and [262] cashed it and gave instructions to the truck driver, I happened to have my car there at the time, or his, I have forgotten which one, but it doesn't make any difference, and we went on home, back to Riverside.

Q. Who is "we"?

A. John Couch and myself. He gave the money to this truck driver and told him to take it down and deposit it.

Q. Did the deposit show up in the bank account at all? A. No, sir, it did not.

Q. You have looked the bank account over to find if it was there? A. I did.

Mr. Maury: I think that's all.

The Court: Any other questions?

Mr. Nimocks: Yes, your Honor.

Cross Examination

Q. (By Mr. Nimocks): Do you recall, Mr. Geers, whether any of the particular deliveries in question

(Testimony of Charley Geers.)

were held over by you and Mr. Couch for any period of time before delivery to the processor?

A. I will say this. Never in all the time I worked with Johnny did we ever hold over an entire load to my [263] knowledge. Portions of a load, yes.

Q. Did you ever split loads? A. Yes.

Q. You were selling to other processors during this period?

A. Yes, I believe we were. Actually, I went to market only, about, I would say two or three times during this period of time. During I will say a month's period I went maybe six times. Our two trucks were pretty busy most of the time.

Q. Do you recall any telephone conversation you had with Mr. Brooks with regard to purchase of the Ohlson turkeys?

A. Yes, I believe I had a telephone conversation with him.

Q. When did that take place with relation to this first purchase? A. I don't know.

Q. Was it before or afterwards?

A. Mr. Brooks testified the other day, if I remember correctly, yesterday, that when he and I had a conversation at the scales the turkeys didn't enter into it, but I beg to differ with him.

Q. What about these telephone conversations, were they before or after the first purchase from Ohlson? A. I don't remember.

Q. Do you recall the substance of the conversations? [264] A. No, I can't.

Mr. Nimocks: I have no further questions.

(Testimony of Charley Geers.)

Redirect Examination

Q. (By Mr. Maury): You have closed out the bank account, have you not?

A. I think it died a natural death. At the time, just about that time I found out what was going on and I cut loose from Mr. Couch when I found that one check there.

Mr. Maury: That's all.

The Court: You may step down.

(Witness excused.)

The Court: Any other testimony?

Mr. Maury: We have no other testimony. I would like to have some time to brief this case.

The Court: I will be glad to give you time to brief the case, but I would like to discuss the case with you a little bit.

(Discussion between Court and counsel.)

The Court: I will take the matter under submission. I will give both parties until March 25 to file their opening brief. I want simultaneous briefs. I find I have better results by getting simultaneous briefs. Otherwise, one party waits for the first brief and tries to answer that without giving me his authorities. Then I will allow each party [265] until the first day of April to file a reply, if they want to, and then the matter will stand submitted as of April 1st.

Mr. Nimocks: The first brief March 25?

The Court: Yes, and April 1st to reply. That gives you thirty days.

Mr. Maury: Thank you, sir.

The Court: Court will stand at recess until 10:00 o'clock tomorrow morning. [266]

[Endorsed]: Filed August 3, 1954.

[Endorsed]: No. 14471. United States Court of Appeals for the Ninth Circuit. The Quaker Oats Company, a corporation, Appellant, vs. W. E. McKibben, A. B. Carter, O. R. Lewis and Charley Geers, Appellees. The Quaker Oats Company, a corporation, Appellant, vs. Charley Geers, Appellee. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: August 5, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14471

THE QUAKER OATS COMPANY, etc.,
Appellant,

vs.

JOHN J. COUCH, CHARLEY GEERS, O. R.
LEWIS, et al., Respondents.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD (On Both Appeals)

Appellant's Statement of Points

1. The Trial Court erred in making and entering two separate (and inconsistent) sets of Findings of Fact, and Conclusions of Law.
2. The Trial Court erred in making and entering two separate (and inconsistent) judgments.
3. The Trial Court erred in holding that sales of turkeys had been made and were complete prior to the honoring of the checks given for payment by the bank upon which drawn.
4. The Trial Court erred in holding that the purchasers of the turkeys were not charged with constructive notice of the entire contents of the recorded chattel mortgages.
5. The Trial Court erred in holding that usage and custom prevailed over written, recorded documents.
6. The Trial Court erred, in the "McKibben-Carter-Lewis Findings," (hereinafter called the

MCL Findings) in failing to note, consider, and give weight to the fact, in the MCL finding numbered 1, that the recorded Chattel Mortgages themselves contained clauses notifying the world that no sales by growers would be valid without Appellant's written consent.

7. The Trial Court erred, in MCL finding numbered 3, in finding, contrary to the evidence, that Couch (now deceased) personally made all the purchases of turkeys from the growers.

8. The Trial Court erred in entering MCL finding numbered 3 in that it is contrary to the evidence and confuses money in bank with uncollected deposits.

9. The Trial Court erred in finding that defendant Charley Geers had no notice of the terms of the Chattel Mortgages.

10. The Trial Court erred in entering Finding numbered 7 of the Findings of Fact and Conclusions of Law, hereinafter called the "Geers Findings," as the same is unsupported by the evidence and confuses money in the bank with uncollected deposits.

11. The Trial Court erred in making and entering the Conclusions of Law proposed by defendant Geers.

12. The Trial Court erred in making Finding numbered 11 of the Geers Findings, as same is unsupported by and is contrary to the evidence.

13. The Trial Court erred in making Finding numbered 12 of the Geers Findings, as the same is contrary to the evidence.

14. The Trial Court erred in making MCL Finding numbered 5, as it is contrary to the evidence, and unsupported thereby.

15. The Trial Court erred in entering MCL Finding numbered 8, as it is contrary to and unsupported by the evidence.

16. The Trial Court erred in entering MCL Finding numbered 9, as it is a blanket finding and is unsupported by and is contrary to the evidence.

17. The Trial Court erred in holding that the lien of the Chattel Mortgage was not valid against the defendants McKibben, Carter, and Lewis.

18. The Trial Court erred in holding that the lien of the Chattel Mortgage was not valid against the defendant Charley Geers.

19. The Trial Court erred in deciding the case in favor of the defendants, each respectively, and against the plaintiff.

Designation of Record

1. The Complaint;
2. The Answers of each and all of the defendants;
3. Any and all other pleadings as such are defined by the Federal Rules of Civil Procedure;
4. Any and all documentary evidence, including all exhibits in evidence;
5. Any and all exhibits in evidence and/or identified and marked for identification during the course of the trial, as adduced by any party;
6. The Memorandum of Opinion of the District Judge;

7. The Findings of Fact and Conclusions of Law as proposed by Frank C. Nimocks, attorney for defendants McKibben, Carter, and Lewis, and signed by the Judge, and entered;

8. The Findings of Fact and Conclusions of Law as proposed by defendant Charley Geers, and signed by the Judge, and entered;

9. The Judgment as proposed by Frank C. Nimocks, attorney for defendants McKibben, Carter and Lewis, and signed by the Judge, and entered;

10. The Judgment as proposed by defendant Charley Geers in propria persona, and signed by the Judge, and entered;

11. The Notices of Appeal on file herein (2);

12. The transcript which was stenographically reported in accordance with Rule 75 (b), and appellant hereby designates the entire reporter's transcript.

13. This Statement of Points and Designation of Record.

Dated: September 23, 1954.

MAURY, LARSEN & HUNT,
/s/ By GEORGE R. MAURY,
Attorneys for Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 24, 1954. Paul P. O'Brien, Clerk.